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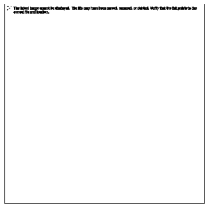
To: R1 NewsClips [R1_NewsClips@epa.gov]
Subject: Inside EPA, Friday, January 8, 2021

Print/Online News



EPA Defends Authority To Remove Ozone Ã"BacklidingÃ• Emission Controls

Inside EPA | 01/08/2021 (4 hours, 7 minutes ago)

December 29, 2020 ***EPA*** *is defending its authority to remove Clean Air Act measures designed to protect areas against Ã'backsliding,Ã" or...*

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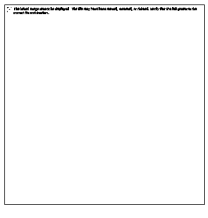

Judge Orders Ã"UnwillingÃ• EPA To Mandate Asbestos Reporting Under TSCA

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December 23, 2020 A federal judge has ordered ***EPA*** *to amend its Chemical Data Reporting (CDR) rule to require companies importing or...*

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Final EPA Aircraft GHG Rule Lacks Mandate For Additional Emissions Cuts

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December 28, 2020 ***EPA*** *has finalized first-time greenhouse gas limits for aircraft engines that lock in place emissions reductions that...*

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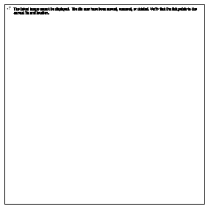

Lawsuit Puts Early Pressure On Biden EPA Over Stricter Refinery Air Rules

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...4, 2021 Environmentalists are pursuing fresh litigation aiming to force ***EPA*** *to issue tougher rules to limit harmful air pollution...*

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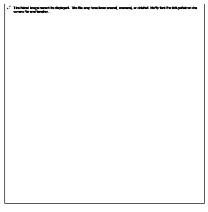

Industries Back EPA Recycling Strategy, Inclusion of Ã"Advanced RecyclingÃ•

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...controversial method that has drawn opposition from environmentalists. ***EPA*** *took comment through Dec. 4 on its recycling strategy,...*

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Former State Officials Urge Biden EPA Funding Hike, More Cooperation

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*...group of more than 40 former state regulators is urging the incoming Biden **EPA** to significantly ramp up cooperation with states and...*

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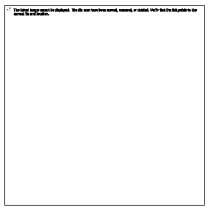

Rejecting Concerns Of Many, EPA Quickly Finalizes 1,4-Dioxane Evaluation

Inside EPA | 01/08/2021 (4 hours, 8 minutes ago)

*January 4, 2021 Three weeks after receiving public comments, the Trump **EPA** has quickly finalized its controversial TSCA evaluation of...*

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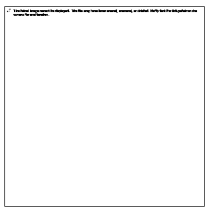

With Mallory At CEQ Helm, White House Expected To Undo NEPA Rollbacks

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*...CEQ career official who recently went into private practice, tells Inside **EPA** that Mallory is Ã'extraordinarily well qualified for...*

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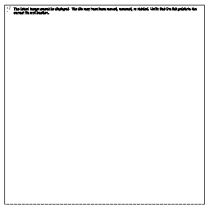

EPA Cost-Benefit Rule May Face Early Attacks By Biden Administration

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*...Defense CouncilÃ•s (NRDC) clean air director John Walke tells Inside **EPA**. However, sources are emphasizing the likely need for...*

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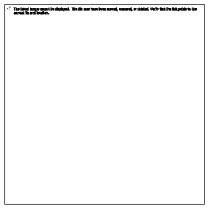

EPA Finalizes Criticized Asbestos Evaluation But Agrees To Narrow Focus

Inside EPA | 01/08/2021 (4 hours, 8 minutes ago)

*December 31, 2020 **EPA** has finalized without significant change its long-awaited TSCA evaluation of asbestos, reaching the same...*

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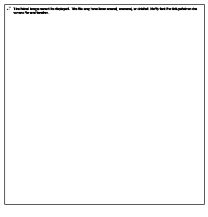

EPA Expands TSCA Waivers In Final PBT Rules, Opening Door To Suits

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*December 24, 2020 **EPA** has issued precedent-setting rules governing five persistent, bioaccumulative and toxic (PBT) chemicals that...*

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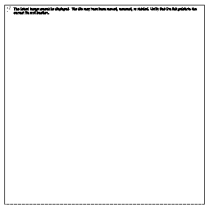

Amid Calls For Rescission, Wheeler Defends Science Rule From BackersÃ• Concerns

Inside EPA | 01/08/2021 (4 hours, 8 minutes ago)

January 5, 2021 ***EPA*** *Administrator Andrew Wheeler is seeking to address concerns from conservative supporters that the agencyÃ•s...*

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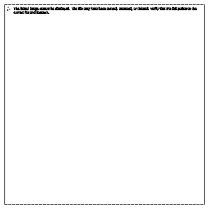

New Jersey DEP Chief McCabe Faults EPA For Lack Of PFAS Class Policy

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...environment chief Catherine McCabe is faulting what she calls a lack of ***EPA*** *leadership as one of two major obstacles that explain...*

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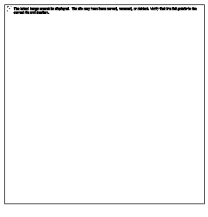

5th Circuit Upholds EPA Discretion In Texas Ozone Designations Case

Inside EPA | 01/08/2021 (4 hours, 8 minutes ago)

...process. In its Dec. 23 unanimous ruling in State of Texas, et al., v. ***EPA****, et al., a three-judge panel of the court finds that...*

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Carper Calls For EPA To Strengthen Recycling Strategy, Broaden Scope

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*...& Public Works (EPW) Committee, and state groups are calling on **EPA** to significantly strengthen its national recycling strategy,...*

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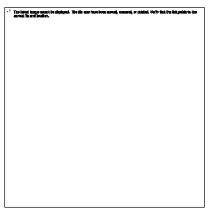

Wheeler Downplays Health Effects Data In Rule Retaining Ozone NAAQS

Inside EPA | 01/08/2021 (4 hours, 8 minutes ago)

*December 23, 2020 **EPA** Administrator Andrew Wheeler is defending his just-announced final decision to retain the agencyÃ•s current...*

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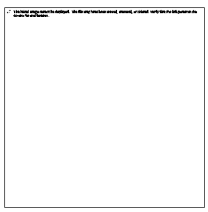

EPA Defends Authority To Remove Ozone Ã"BacklidingÃ• Emission Controls

Inside EPA | 01/08/2021

December 29, 2020 ***EPA*** is defending its authority to remove Clean Air Act measures designed to protect areas against Ã'backsliding,Ã“ or worsening, their air quality in situations when an area attains a federal national ambient air quality standard (NAAQS) after the agency has already revoked the NAAQS, in a lawsuit challenging use of the policy in two Texas cities.

In a Dec. 23 brief filed in the U.S. Court of Appeals for the District of Columbia Circuit in Sierra Club, et al. v. ***EPA***, et al., the agency also says the court is the wrong venue for the litigation and that it should be heard in the

5th Circuit. Ã'The legal effect of terminating antibacksliding obligations in two areas of Texas is not nationally applicable,Ã" which is the standard for hearing suits in the D.C. Circuit, according to the brief.

Environmentalists are contesting EPAÃ•s approval of state implementation plans (SIPs) written by Texas detailing ozone-reduction strategies for Dallas and Houston to attain ozone NAAQS, including since-revoked limits.

EPA says it acted within its legal authority to lift anti-backsliding measures for Houston and Dallas with regard to revoked ozone standards issued in 1979 and 1997. The areas have since met the revoked standards, ***EPA*** says, but because the NAAQS are no longer in effect it cannot formally redesignate them to attainment.

The air law Ã'does not address the termination of control obligations for areas that attain a NAAQS after the NAAQS has been revoked. ***EPA*** reasonably looked to the analogous provision in the Act that identifies five criteria for the termination of control obligations for areas that attain the NAAQS before the NAAQS are revoked,Ã" the brief says.

Those criteria are: a determination that the area has attained the NAAQS; ***EPA*** has fully approved the applicable SIP; the improvement in air quality is due to permanent and enforceable reductions in emissions; ***EPA*** has approved a [NAAQS] maintenance plan; and the state containing such area has met all requirements applicable to the area.

The D.C. Circuit in a series of cases starting in 2006 and known as South Coast Air Quality Management District v. ***EPA***, has limited the agencyÃ•s ability to lift emissions controls for revoked standards, requiring that anti-backsliding measures remain in place, and rejecting a Ã'redesignation substituteÃ" that ***EPA*** previously crafted as insufficiently rigorous. The substitute mechanism did not require that all five criteria be met.

EPA in the Sierra Club brief acknowledges the courtÃ•s rulings and its position that the agency must apply the same strict criteria to lifting the anti-backsliding provisions for areas in the same situation as Houston and Dallas as it would for areas that meet the air standards before they are revoked. Ã'EPAÃ•s interpretation is consistent with this CourtÃ•s South Coast II decision, which held that the Act requires satisfaction of the five criteria . . . before anti-backsliding controls for a revoked ozone NAAQS may be terminated,Ã" according to the brief.

Environmentalists argue, however, that the courtÃ•s 2018 opinion in South Coast II -- a complex decision that vacated the redesignation substitute and other aspects of EPAÃ•s ozone implementation regime -- does not allow for EPAÃ•s chosen approach, and that the agencyÃ•s action is further unwarranted when ozone levels in Houston or Dallas exceed tougher ozone NAAQS that are still in effect.

They also fault ***EPA*** for lifting anti-backsliding measures in the two cities in the interim between the South Coast II decision and the agencyÃ•s revision of its ozone NAAQS implementation regulations on remand.

EPAÃ•s Justifications

But ***EPA*** counters that Ã'The Act does not require that Houston and Dallas must attain more recent, more stringent standards before ***EPA*** may terminate control measures implemented solely to meet earlier NAAQS.Ã"

EPA says that it was justified in lifting the measures using a method that it believes conforms to the courtÃ•s thinking, before revising its implementation rules for the ozone NAAQS program.

Ã'The record fully supports EPAÃ•s finding that Texas demonstrated that the Houston and Dallas areas met all five criteriaÃ" required for lifting control measures Ã'for the 1979 and 1997 ozone NAAQS,Ã" ***EPA*** says.

The agency says, Ã'Houston has been meeting the 1979 NAAQS since 2013, and the 1997 NAAQS since 2014. Dallas has been meeting the two NAAQS since 2006 and 2014, respectively.Ã"

Meanwhile, the agency reiterates its argument that the correct venue for the Sierra Club case is not the D.C. Circuit, which hears suits on rules that are nationally applicable, or rules that ***EPA*** has declared to have nationwide scope or effect. The agency says that it made no such declaration with respect to the Texas plans. Parallel litigation in the 5th Circuit is on hold pending the D.C. CircuitÃ•s resolution of the venue question.

Ã'The Final Rules pertain to EPAÃ•s approval of Texas submittals that have legal effect only in the Houston and Dallas areas. They are therefore locally applicable and venue is proper only in the Fifth Circuit. The legal effect of terminating antibacksliding obligations in two areas of Texas is not nationally applicable even assuming the Final

Rules could set agency precedent as a practical matter for future actions arising in other states,Ã“ the brief says.
-- Stuart Parker (sparker@iwpnews.com)

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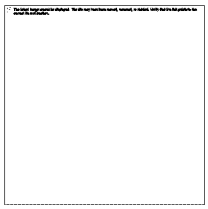

Judge Orders Ã"UnwillingÃ• EPA To Mandate Asbestos Reporting Under TSCA

Inside EPA | 01/08/2021

December 23, 2020 A federal judge has ordered ***EPA*** to amend its Chemical Data Reporting (CDR) rule to require companies importing or using asbestos to report information about those uses to the TSCA program, after finding the agency acted unlawfully in denying Democratic statesÃ• and public health advocatesÃ• petitions asking officials to do so.

Ã'***EPA*** is not incapable of collecting this information; instead, it is unwilling to do so,Ã“ Judge Edward Chen of the U.S. District Court for the Northern District of California wrote in a scathing Dec. 22 order granting the statesÃ• and environmentalistsÃ• motions for summary judgement and denying EPAÃ•s cross-motion for summary judgement.

Ã'EPAÃ•s unwillingness to act stands in the face of its significant statutory authority to require that this information be reported via the CDR rule and runs contrary to its obligation to collect reasonably available information to inform and facilitate its regulatory obligations under TSCA. By failing to do so, the ***EPA*** has not acted in accordance with law.Ã“

The ruling marks just the latest loss the Trump ***EPA*** has drawn from Chen in its efforts to implement the revised Toxic Substances Control Act (TSCA).

His decision will also likely hand the incoming Biden administration an opportunity to require such reporting and bolster the plaintiffsÃ• efforts to strengthen any ***EPA*** risk evaluation of asbestos -- in the event Congress does not step in to mandate regulatory action.

The two consolidated cases -- Asbestos Disease Awareness Organization (ADAO) et al v. ***EPA*** and State of California et al v ***EPA*** -- stem from EPAÃ•s denial of a pair of petitions plaintiffs submitted to ***EPA*** under the citizen petition provisions of TSCA section 21.

They sought to reverse EPAÃ•s decision exempting asbestos from CDR reporting because it is a naturally occurring substance.

EPA regularly uses CDR data for its exposure analyses because for many TSCA chemicals, the CDR data is all that it has. CDR reports generally include information such as how much of a chemical is produced at various facilities, how much is imported into the country, and how many workers could be exposed.

But the agency denied the petitions, arguing it was within its discretion to do so. It charged that subjecting asbestos to CDR reporting would not result in submission of new information to which the agency lacked access and that the information would not arrive at the agency in time to inform its ongoing TSCA evaluation of asbestos.

Ã'***EPA*** declined the petitionÃ•s request to collect more information about asbestos-containing articles even though the petition accurately described how little information ***EPA*** has about the quantities of asbestos-containing products in the U.S. chain of commerce and the overall consumer and occupational exposure for

downstream uses of asbestos,Ã“ Chen writes. Ã'***EPA*** declined to collect more information about asbestos impurities without seriously analyzing whether companies had access to reasonably ascertainable third-party testing from suppliers.Ã“

Administrative Procedure Act

The litigation has already set a precedent when Chen ruled in 2019 for the suit to proceed under the Administrative Procedure Act (APA), rather than TSCA, allowing for the possibility of more speedy action but limiting the courtÃ•s review to the administrative record.

In his Dec. 22 order, Chen notes that along with other case law, his decision in is based in part on the Supreme CourtÃ•s 1971 decision in another APA case, Citizens to Preserve Overton Park v. Volpe. Ã'By failing to consider all Ã"relevant factorsÃ• in its information-gathering efforts, the ***EPA*** has also acted arbitrarily and capriciously,Ã“ Chen writes, referencing Overton Park.

As a result, Chen directs ***EPA*** Ã'to amend its CDR reporting rule pursuant to its authority under . . . Section 8(a) of TSCA, to address the information-gathering deficiencies identified herein.Ã“ And he writes that he will Ã'retain[] jurisdiction for purposes of ensuring compliance.Ã“

Further, Chen finds the agencyÃ•s Ã'decision not to collect the information which the Plaintiffs contend should be collected via the elimination of the CDR exceptions did not come after taking a Ã"hard lookÃ• at the value and availability of the additional information the ***EPA*** has forsaken.Ã“ Chen concludes the Supreme CourtÃ•s 2004 decision in another prior APA case, Norton v. Southern Utah Wilderness Alliance, requires federal agencies Ã'to take a hard look at the proffered evidence.Ã“ Chen finds that ***EPA*** did not do so.

ChenÃ•s ruling is not wholly surprising. At the hearing last month over plaintiffsÃ• and EPAÃ•s opposing motions for summary judgement, Chen appeared to leave the door open to plaintiffsÃ• arguments, suggesting the states may have standing to sue while environmentalists may be able to make extra-record arguments -- both issues ***EPA*** opposed. During the Nov. 12 hearing, Chen considered the Ã'paradoxÃ“ of whether he could consider documents outside the record that bolster the plaintiffsÃ• case while also appearing doubtful of EPAÃ•s arguments that the handful of states led by Democrats bringing the suit do not have standing.

Specifically, ADAOÃ•s summary judgement argument cited ***EPA*** science advisorsÃ• critique of the agencyÃ•s draft TSCA risk evaluation of chrysotile asbestos to buttress their litigation -- even though the advisorsÃ• report was issued after the litigation began and is not part of the record. They argued the Science Advisory Committee on ChemicalsÃ• (SACC) report criticizing EPAÃ•s draft evaluation for lacking a host of data -- and calling for ***EPA*** to redo it -- undercut officialsÃ• claims that adding asbestos to the CDR was not needed.

Chen references the SACC report in his ruling, noting that Ã'***EPA*** declined to collect more information about asbestos processors, instead relying on the type of voluntary reporting that its scientific advisors deem inadequate in the SACC Report.Ã“

In a statement, ADAO welcomed the ruling. Ã'Judge ChenÃ•s decision could not be clearer that ***EPA*** lacks basic information on asbestos exposure and risk and has no credible excuse for failing to use its TSCA reporting authority to fill these glaring gaps in understanding,Ã“ said ADAOÃ•s counsel, Robert Sussman.

Ã'As the [SACC] found, this lack of knowledge is among the many serious flaws in the Draft Risk Evaluation for Asbestos and demonstrates that ***EPA*** is failing to provide the protection against this lethal substance that Congress demanded when it amended TSCA in 2016.Ã“ -- Maria Hegstad (mhegstad@iwpnews.com)

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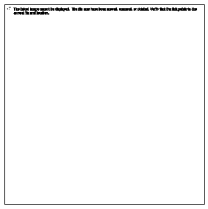

Final EPA Aircraft GHG Rule Lacks Mandate For Additional Emissions Cuts

Inside EPA | 01/08/2021

December 28, 2020 ***EPA*** has finalized first-time greenhouse gas limits for aircraft engines that lock in place emissions reductions that the industry will achieve anyway without additional control measures but fail to include any mandate for deeper GHG cuts sought by environmentalists and some mainly Democratic-led states, teeing up a likely legal challenge.

The final aircraft GHG rule, released Dec. 28 ahead of its future publication in the Federal Register, could potentially also face reconsideration and tightening by the incoming Biden administration.

The rule aligns U.S. domestic regulations with GHG limits agreed in 2017 by the International Civil Aviation Organization (ICAO), the global standard-setting body of which the United States is a member. In a Dec. 28 press release, ***EPA*** Administrator Andrew Wheeler said, Ã'The U.S. leads the world in reducing greenhouse gas emissions and todayÃ•s historic action that finalizes the first-ever GHG standard for aircraft will continue this trend.Ã"

The rule, issued under Clean Air Act section 231 that governs air pollution from aircraft engines, will take effect immediately upon publication in the Register, which also starts a 60-day clock for critics to file lawsuits.

President-elect Joe Biden could also attempt to reconsider the policy after his Jan. 20 inauguration, but it is unclear whether the Biden administration would wish to immediately rescind the rule, given that it is required to give continued access to other countriesÃ• airspace for U.S.- made aircraft.

EPA in the press release about the rule says, Ã'These standards will help ensure consistent standards across the world, and most importantly allow U.S. manufactured planes, such as commercial and large passenger jets, to continue to compete in the global marketplace.Ã"

The agency in the regulatory text defends its position that the section 231 limits are Ã'technology following,Ã" and not Ã'technology-forcingÃ" as environmentalists and others sought in their comments on the proposed version of the rule that ***EPA*** floated in July.

Ã'***EPA*** is not projecting emission reductions associated with these GHG regulations,Ã" according to the rule. Ã'Many airplanes manufactured by U.S. manufacturers already met the ICAO standards at the time of their adoption and thus already meet the standards contained in this action. Furthermore, based on the manufacturersÃ• expectation that the ICAO standards will be implemented globally, the ***EPA*** anticipates nearly all affected airplanes to be compliant by the respective effective dates for new type designs and for in-production airplanes."

Therefore, Ã'EPAÃ•s business as usual baseline projects that even independent of the ICAO standards, nearly all airplanes produced by U.S. manufacturers will meet the ICAO in-production standards in 2028."

The final rule also drops an annual reporting requirement from the proposed version for manufacturers on airplane characteristics, emissions characteristics and production volumes. The agency now says the reporting would have been duplicative of ICAO and Federal Aviation Administration requirements, and presents Ã'risks to confidential business information, and higher costs associated with the reporting requirement than ***EPA*** projections."

EnvironmentalistsÃ• Criticisms

Environmentalists were swift to condemn EPAÃ•s approach, with Annie Petsonk, international counsel with the Environmental Defense Fund, saying, Ã'this do-nothing rule is totally inadequate in light of the climate crisis. ItÃ•s incumbent on the incoming Biden-Harris administration to move swiftly to tighten this standard.Ã"

Further, Petsonk says the rule fails to address other harmful air emissions from aircraft. Ã'EPAÃ•s new rule fails to address the environmental injustice of high toxic and particulate pollution around airports, which disproportionately affects airport workers and local communities downwind.Ã"

Pushing for a stricter regulation, Petsonk adds that an Ã'ambitious rule that addresses these disproportionate effects, and gives the industry flexibility to use the full panoply of measures -- from better engine and aircraft design, to light-weighting, to high-quality sustainable fuels, and limited high quality carbon credits such as those already agreed to by the United States in [ICAO] -- can spur innovation across the sector, put people to work

retrofitting todayÃ•s aircraft and producing better fuels and aircraft, and make real cuts in aviation pollution.Ã“

Environmentalists in comments on the proposed rule said that because ***EPA*** in 2016 found that GHGs from aircraft endanger public health and welfare, a regulation that fails to mitigate this risk is inherently unlawful.

Democratic attorneys general from California, Connecticut, Illinois, Maryland, Massachusetts, Minnesota, New Jersey, New York, Oregon, Vermont, Washington and the District of Columbia also warned that the lack of ambition renders the rule unlawful under the air law.

But ***EPA*** in its response to comments pushes back against suggestions from various environmental groups that it must enact tougher standards in order to comply with air law pollution reduction mandates. The agency also says it had no obligation to consider a range of additional aspects of aircraft design and operation beyond just engines. Nor must the agency regulate aircraft that are currently in service, ***EPA*** says.

Ã'In addition to what the ***EPA*** considered for the airplane GHG standards, numerous commenters requested that the ***EPA*** contemplate further items such as the following: other programs, additional technologies, more stringent standards, technology forcing standards (instead of technology following standards), sustainable aviation fuels (or alternative fuels), all electric airplanes, hydrogen-fueled commercial aircraft, alternative compliance mechanisms, etc,Ã“ ***EPA*** says.

Ã'***EPA*** did not gather data, could not conduct necessary analyses of such data, or otherwise develop a record that considered many of these items sufficiently to propose standards reflecting many of these items; therefore, the public has not been provided an opportunity to evaluate and comment upon these programs. Furthermore, such a record would include new analyses (and/or assessment) of technological feasibility, costs, and environmental benefit (e.g., emission reductions and monetized benefits),Ã“ the agency says.

Ã'To effectively assess these items, the ***EPA*** would need more time to gather information on them, and the ***EPA*** currently does not have the time in order for the United States to meet its obligations under the Chicago ConventionÃ“ that governs international air travel. Ã'***EPA*** is now late in issuing its GHG standards applicable to new type designs, as the January 1, 2020, applicability date under the international [carbon dioxide, or CO2] standards has already passed, and the ICAO applicability date of January 1, 2023 for modified airplane types (changes for non-GHG Certificated Airplane Types) is fast approaching,Ã“ the rule says.

Response To Comments

Responding to environmentalistsÃ• urging that the agency regulate aircraft already in service, Ã'***EPA*** agrees with commenters that it has the authority to regulate aircraft engines installed on in-service airplanes in addition to aircraft engines installed on newly produced airplanes. However, as part of this action the ***EPA*** has not established any record that would allow it to propose or finalize any GHG standards for in-service airplanes. . . . This rule was not intended to cover every possible aspect of GHG emissions from airplanes or be the ***EPA***'s final input on the topic.Ã“

EPA is also careful to distinguish between its consideration of factors other than engine characteristics that affect fuel consumption of engines, and regulation of other parts of the aircraft themselves.

Ã'***EPA*** agrees with the statements of support from commenters that the ***EPA*** in this first set of airplane engine GHG standards control GHG emissions in a manner identical to how ICAO's standards control CO2 emissions -- with a fuel efficiency standard based on the characteristics of the whole airplane,Ã“ the rule says.

However, Ã'***EPA*** clarifies that by adopting a fuel efficiency standard the agency is not directly regulating Ã”the entire aircraft.Ã• Instead, ***EPA*** is adopting a standard that controls aircraft engine GHG emissions after considering factors in addition to engine technology that affect the amount of GHGs that such engines emit.Ã“

Although environmentalists oppose the final rule, the Aerospace Industries Association (AIA) offered praise for the agencyÃ•s policy. AIA Vice President of Civil Aviation David Silver in a press release said, Ã'With this final rule, the ***EPA*** has demonstrated AmericaÃ•s commitment to global action against climate change and ensured U.S. aircraft will meet the same standards as our competitors across the world. Improving aircraft efficiency is a crucial part of the aviation industryÃ•s plans to reduce CO2 emissions, and we look forward to working with the FAA to incorporate this standard into its aircraft certification requirements.Ã“ -- Stuart Parker (sparker@iwpnews.com)

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Lawsuit Puts Early Pressure On Biden EPA Over Stricter Refinery Air Rules

Inside EPA | 01/08/2021

January 4, 2021 Environmentalists are pursuing fresh litigation aiming to force ***EPA*** to issue tougher rules to limit harmful air pollution from refineries by citing environmental justice (EJ) concerns from the facilitiesÃ• emissions, putting early pressure on the incoming Biden administration to quickly decide on whether to tighten the regulations.

In a new lawsuit filed Dec. 17 in the U.S. Court of Appeals for the District of Columbia Circuit, a broad alliance of 11 environmental and local public health advocacy organizations renew their push for tougher refinery air toxics standards that they have long sought from the agency. The suit, Air Alliance Houston, et al., v. ***EPA***, et al., targets EPAÃ•s denial, published Oct. 26, of the groupsÃ• petition for administrative reconsideration of the agencyÃ•s maximum achievable control technology (MACT) standards for refineries.

EPAÃ•s denial rejected an April 6 petition environmental groups filed asking the agency to reconsider its Feb. 14 refinery MACT rule. The February rule in turn denied an earlier petition by environmentalists to tighten 2015 standards for the industry set by the Obama administration.

The court will likely consolidate the new lawsuit with earlier suits filed in the D.C. Circuit by the same groups, directly seeking judicial review of the Feb. 14 rule and earlier ***EPA*** refinery rules. That case, also titled Air Alliance Houston, is still in abeyance pending the courtÃ•s decision on how to proceed.

While the new legal filing does not state issues to be raised in the litigation, the groups, including both national groups such as Sierra Club and a number of local advocacy organizations such as the Louisiana Bucket Brigade, have for years been battling ***EPA*** in the courts seeking stricter emissions limits from refineries.

Ã'Communities living near oil refineries wonÃ•t stand by as ***EPA*** refuses to remove the free passes to pollute it gave these large corporations. ItÃ•s simply not fair for ***EPA*** to force fenceline communities, especially children, near oil refineries to have to breathe unhealthy air that can cause cancer,Ã" said Earthjustice attorney Emma Cheuse, representing environmental petitioners, in an Oct. 23 statement on EPAÃ•s denial of the groupsÃ• reconsideration petition.

The ongoing litigation will force the incoming Biden administration to take a position on refineries and other heavy industrial facilities that pollute nearby communities and have disproportionate impacts on low-income and minority residents. Biden has pledged a focus on such EJ issues, reflected in his choice of current North Carolina environment chief Michael Regan to lead ***EPA***. Regan, who would be the first Black man and the second African-American to be ***EPA*** chief, is seen by some observers to be more sensitive to EJ concerns.

Conscious of the new administrationÃ•s pledges to address EJ, environmental groups have also filed several lawsuits and petitions for administrative reconsideration over other Trump ***EPA*** air toxics rules that they say are too weak. The litigation raises similar issues regarding EPAÃ•s assessment of health risks from air toxics releases, which campaigners say often undercounts risks, especially from long-term exposure to multiple pollutants.

EnvironmentalistsÃ• Objections

Issues raised in their petitions for administrative reconsideration and prior legal actions on refineries include EPAÃ•s assessment of health risks from refineries, which the groups say underestimates cumulative health risks from exposure to toxic air pollution; regulatory exemptions for periods of facility malfunction, and for emissions from pressure relief devices (PRDs) and flares used for burning off excess gases; exemptions applicable for excess emissions during force majeure events such as hurricanes; and the need for improved fenceline monitoring and corrective actions where emissions exceed levels established in Clean Air Act permits.

EPAÃ•s October denial of the groupsÃ• petitions for reconsideration of the refinery rules specifically rejected

arguments that numeric emissions limits should apply to PRDs Ã'at all times.Ã" ***EPA*** instead has allowed refineries to comply with Ã'work practice standardsÃ" for PRDs. Similarly, the groups faulted EPAÃ•s rationale for separate work practice standards for flares operating above their Ã'smokeless capacity.Ã"

EnvironmentalistsÃ• objections stem from EPAÃ•s refusal to tighten the 2015 Obama ***EPA*** risk-and-technology review (RTR) rule for refineries. Under an RTR, required eight years after ***EPA*** first issues a national emissions standards for hazardous air pollutants rule for a sector, ***EPA*** must evaluate whether Ã'residualÃ" risks to public health remain and whether new, cost-effective control technologies are available. Should the agency find remaining risks, or new control technologies, it can tighten the standards.

The 2015 rule found health risks acceptable and abandoned a proposed ban on venting gases from PRDs, instead instituting work practice standards to minimize venting. The rule also set tougher performance parameters for flares used to dispose of waste gas. The Trump administration has, however, made some changes to the 2015 rule to ease compliance for industry, in a November 2018 rule.

EPA argues that there is no need for all aspects of an air pollution standard, such as numeric limits, to apply Ã'at all times,Ã" despite D.C. Circuit precedent holding that air pollution standards must be continuously applicable. This issue is likely to recur in lawsuits over other air toxics rules, and also in suits concerning the Trump EPAÃ•s policy that states may allow exemptions for excess pollution from industry during periods of facility startup, shutdown and malfunction in their state implementation plans for attaining federal air quality standards. -- Stuart Parker (sparker@iwpnews.com)

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Industries Back EPA Recycling Strategy, Inclusion of Ã"Advanced RecyclingÃ•

Inside EPA | 01/08/2021

December 24, 2020 The waste and chemical industries are generally backing EPAÃ•s draft National Recycling Strategy but groups representing the sectors are advocating additional measures with some industry organizations pushing for inclusion of Ã'advanced recyclingÃ" -- a controversial method that has drawn opposition from environmentalists.

EPA took comment through Dec. 4 on its recycling strategy, which emphasizes lowering contamination in recycling, and boosting processing efficiency and end-markets. The comments come just after ***EPA*** announced it was adopting a goal of raising nationwide recycling rates significantly -- to 50 percent by 2030 -- which will guide implementation of EPAÃ•s recycling strategy.

In particular, the chemical industry is pushing for incorporating Ã'advanced recyclingÃ" into all three objectives ***EPA*** has recommended in its strategy. Advanced recycling uses technologies such as chemical recycling, pyrolysis, or gasification to chemically change plastic polymers and convert them back into individual monomers, to be reused in various products, according to industry.

But such a push is likely to draw opposition from environmentalists, who contend that advanced recycling is a Ã'green-washing tech fixÃ" that has so far failed to recover plastic to make new plastics commercially and largely turns plastic into fuel to be burned.

EPA received a host of comments from the chemical, waste and scrap industries as well as states and Sen. Tom Carper (D-DE), the ranking member on the Senate environment committee, on its draft recycling strategy, released Oct. 5. Carper and some states are urging ***EPA*** to go much further in its strategy and expand it to

emphasize reduction and reuse, along with a move to adopting product stewardship policies.

The draft strategy outlines three overarching objectives of reducing contamination in waste meant for recycling, increasing facilitiesÃ• processing efficiency, and bolstering markets for recycled material.

The American Chemistry Council (ACC), which represents the chemical industry, submitted comments Dec. 3, calling on the agency to incorporate advanced recycling into all three of the strategyÃ•s objectives, Ã'especially the role it will play in creating new markets for post-use plastics.Ã" And, recycling should be defined more broadly, to include both mechanical and advanced recycling, it says.

ACC contends that for the plastics industry to meet its circular economy goal of reusing, recycling and recovering all plastic packaging by 2040, a significant amount of plastic packaging will have to be recycled using advanced chemical processes. With momentum building by industries to scale up advanced recycling technologies, advanced recycling will start to play a large role in the recycling system, particularly for resin codes 3 through 7, ACC says, referring to items such as films, flexibles, multi-layered pouches and tubes.

Ã'As a result, the focus of the Strategy cannot be on mechanical recycling alone,Ã" ACC says. Ã'It should support improved sortation at [materials recovery facilities (MRFs)] while recognizing that multi-layer films and other plastics that are difficult to sort and recycle into new products mechanically will require advanced recycling solutions."

ACC also calls for adding a new objective to the strategy to increase the supply of collected materials for recycling, and for development of a fee collected by an industry-led stewardship organization assessed on packaging materials and printed paper to go toward capital investments in collection and sorting infrastructure and consumer education.

IndustriesÃ• Input

The National Association for PET Container Resources (NAPCOR) in Dec. 1 comments also pushes advanced recycling as an opportunity to recycle more categories of plastics. NAPCOR suggests ***EPA*** play a key role in funding development of such recycling technologies to facilitate supply chain development that could prompt private investment.

On recycled content in products, ACC says Ã'the best policy approach to support demand for recycled materials is establishing recycled content standards,Ã" noting that Ã'[a]ny mandated recycled content targets must consider environmental lifecycle outcomes,Ã• among other principles.

But the Institute of Scrap Recycling Industries, Inc. (ISRI) in Dec. 2 comments warns that while it believes improving markets is the most important objective of EPAÃ•s three in the strategy, it disagrees with setting mandates for recycled content. ISRI stresses that Ã'any initiative, policy or project to encourage demand for recyclable materials could include incentives and stimulus measures,Ã" but those Ã'must be driven by the market economy.

Ã'Although it is perceived that recycled content mandates, for example, could be a demand-driver, in reality mandates often stifle innovation by hampering recyclers from taking advantage of opportunities in shifting markets.Ã"

Industry groups also in their comments push for strong ***EPA*** leadership on recycling, even though the agency has little policy-making authorities over recycling.

ISRI says public awareness, education and outreach are key to ensuring consumers understand recycling, and will aid in addressing quality and contamination issues still in the residential stream. To succeed on that, ***EPA*** must lead education and outreach measures, it says. Ã'The general population is hungry for information and keen to do their part with recycling, and they are looking for general guidance from their government,Ã" it says.

In addition, the Solid Waste Association of North America (SWANA) in Dec. 4 comments calls for ***EPA*** having Ã'an active and visible role at the national level to create a stronger, more resilient, and cost effective U.S. municipal solid waste recycling system.Ã" It recommends ***EPA*** develop a common recycling message, as it cites Ã'too much confusionÃ" currently with what items can and cannot be recycled.

Ã'A uniform message that focuses on types of materials and not resin codes would be preferable and would allow similar education and outreach throughout the US,Ã" SWANA says.

EPA should also coordinate disparate efforts to improve labeling for recycling, it says. -- Suzanne Yohannan (syohannan@iwpnews.com)

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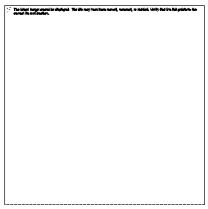

Former State Officials Urge Biden EPA Funding Hike, More Cooperation

Inside EPA | 01/08/2021

January 5, 2021 A bipartisan group of more than 40 former state regulators is urging the incoming Biden ***EPA*** to significantly ramp up cooperation with states and tribes on environmental programs, while also warning that current federal and state funding resources are inadequate to tackle climate change and other major problems.

The calls surface in a Dec. 21 memo to Michael Regan, who is currently serving as North CarolinaÃ•s top environment official and is President-elect Joe BidenÃ•s planned nominee to lead ***EPA***. The memo combines a call for Ã'shared governanceÃ" between states and the agency with warnings that emerging challenges require new federal and state resources if the agency and states are to carry out their responsibilities.

Ã'The environmental regulatory regime we have operated under since the 1970s and 1980s is based

on the principle of cooperative federalism,Ã" write 41 former heads of state environmental, health and natural resource protection departments who served Republican, Democratic and independent governors.

Ã'But much has changed in the intervening [50] years. Complex emerging pollution problems like Ã"foreverÃ• chemicals deserve our immediate attention and prompt action, and a comprehensive national response to climate change is long overdue,Ã" the memo adds. Ã'This will require the dedication of funding, scientific research, and staffing resources that go well beyond the current capacities of the federal and state governments.Ã"

The former state officials then detail a variety of goals or actions they argue should drive the Biden ***EPA***, as well as congressional appropriators, including funding hikes and greater regulatory cooperation.

The memo includes recommendations to Regan in five categories: Ã'partnershipÃ" between ***EPA*** and the states; budget stability and flexible funding; Ã'integratingÃ" social justice and equity into environment programs; water infrastructure; restoring the Ã'primacy of scienceÃ"; and Ã'collaborative rulemaking.Ã"

The partnership recommendations include a call for Regan and ***EPA*** to pursue a Ã'transformative model of shared governance,Ã" citing an existing initiative known as E-Enterprise for the Environment -- begun under the Obama administration in cooperation with states and tribes -- as starting point.

Ã'We recommend that you and your Executive Team . . . rely on it as a platform for realigning ***EPA***, state, tribal and local government roles and responsibilities to emphasize the respective strengths, capabilities and capacities of each level of government,Ã" the memo says about E-Enterprise.

Former Oregon Department of Environmental Quality Director Dick Pedersen, one of the organizers of the letter, characterizes E-Enterprise in an interview with Inside ***EPA*** as a way to achieve desired environmental outcomes Ã'in the most efficient way. We just want to support and enhance that work."

On federal-state cooperation -- often referred to as cooperative federalism -- the memo includes a separate recommendation that both pre-rulemaking and rulemaking phases be Ã'reimagined to allow early and meaningful consultationÃ" with states. Ã'We acknowledge that there may be existing legal and procedural hurdles to allowing early state involvement in all circumstances, but we would ask ***EPA*** to take a hard look at any such limits and

eliminate or minimize such impediments where possible.Ã“

Ã”StagnantÃ• Resources

But much of the memo reflects a call for ***EPA*** to request, and for Congress to embrace, additional resources to tackle an array of environmental needs, Ã'most notably climate change.Ã“ The former state regulators say ***EPA*** and state funding in recent years has been Ã'stagnant at best or shrinking at worst."

Their funding-related recommendations also echo former ***EPA*** officials, who in an October report called for reversing a pattern of declining funding for the agency in real dollars -- including funding to states -- even as environmental needs are growing.

Ã'We recognize that securing adequate funding for all the environmental problems and priorities you and your Executive Team must confront may seem a formidable task,Ã“ the officials tell Regan. Ã'Rest assured you have allies in this effort. We offer our support collectively and individually and urge you to reach out to the Environmental Council of the States (ECOS) for their support as well.Ã“ ECOS is the national nonprofit association representing state and territorial environmental agency heads.

The memo says climate change is Ã'affecting every environmental and public health program for which the agencies are responsible. It is imperative that ***EPA*** and the states have adequate resources to work collaboratively with governments, businesses and the public alike on carbon emission reductions and adaptation programs.Ã“

The former state regulators also include a more specific call to boost resources for State and Tribal Assistance Grants (STAG), in tandem with greater flexibility for states in use of the funding, noting that STAG funding makes up between 25 and 30 percent of state environmental budgets on average.

Ã'What the public may not entirely appreciate or understand is that STAG monies provide the funds necessary for the states to administer the myriad of regulatory programs delegated to the states under existing federal environmental laws -- programs to protect and improve air and water quality, to clean up contaminated sites, and to protect the public from exposure to toxic chemicals.Ã“

The memo with respect to water infrastructure funding says Ã'the need for infrastructure replacement can no longer be ignored.Ã“ And it says ***EPA*** revolving loan programs have not kept pace with drinking and wastewater needs, including the imperative of replacing lead pipes. Ã'The consequences of our nationÃ•s failure to provide safe drinking water or adequately treated wastewater are catastrophic. We strongly recommend ***EPA*** work closely with the states and local governments to develop a grant and loan program that addresses this extraordinary need.Ã“

State OfficialsÃ• Requests

On environmental justice, which Biden has vowed to make a central consideration in agency decisions, the former state officialsÃ• memo urges ***EPA*** to integrate social justice and equity into Ã'all environmental programs,Ã“ and they also fault prior efforts allowing cost considerations to Ã'take priority over benefits from the implementation of environmental laws and programs,Ã“ which can particularly benefit EJ communities.

Ã'We do not disagree that the cost is important, however at the same time and on equal footing we must consider the public health and environmental benefits gained by regulation. The foundation for that benefit is considering the impact on individuals and communities typically overlooked,Ã“ the memo says.

The former state officials also call on ***EPA*** to Ã'rebuild its science-based programs to historic levels and beyond. . . . In the last four years, reliance on science within ***EPA*** has been significantly diminished. We know ***EPA***, and by extension the states, needs to regain the publicÃ•s trust and reassure the public that science is the foundation for all important environmental and public health decisions.Ã“ -- Doug Obey (dobey@iwpnews.com)

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Rejecting Concerns Of Many, EPA Quickly Finalizes 1,4-Dioxane Evaluation

Inside EPA | 01/08/2021

January 4, 2021 Three weeks after receiving public comments, the Trump ***EPA*** has quickly finalized its controversial TSCA evaluation of 1,4-dioxane, rejecting concerns from chemical producers, states and environmentalists over its 11th-hour supplemental that exposure to the substance when used as a byproduct in consumer products does not pose unreasonable risks.

The agencyÃ•s finding on byproducts is likely to please downstream users and processors, who sought the expanded evaluation to preempt growing state efforts to regulate the chemical in consumer products.

But given the broad opposition to the findings, including from the American Chemistry Council (ACC), the incoming Biden administration will likely revisit the issue.

EPA released the final evaluation of 1,4-dioxane, late on Dec. 31, the ninth of the first batch of 10 TSCA evaluations of existing chemicals the agency had promised to release by the end of 2020. This leaves only the pending evaluation of pigment violet 29 for the agency to complete before the end of the Trump administration.

As expected, the final evaluation concludes that the chemical poses unreasonable risk to workers in 13 of 24 evaluated conditions of use. Those findings trigger a one-year deadline under the revised Toxic Substances Control Act (TSCA) to propose risk management rules to mitigate those risks.

EPA found that workers faced unreasonable risk from Ã'both short- and long-term inhalation and dermalÃ“ exposures to 1,4-dioxane, while identifying health effects in the scientific literature ranging from liver, kidney, respiratory system and neurological effects, and cancer.

But on the other hand, ***EPA*** retained its controversial conclusion the chemical poses no unreasonable risk to the general population and findings in its controversial supplemental analysis that eight additional Ã"usesÃ• of the chemical as a byproduct in consumer products also pose no unreasonable risks.

The draft supplement had drawn stiff criticism from multiple groups -- ranging from ACC to states and environmentalists -- who criticized different substantive provisions while urging the agency to seek peer review of the supplemental analysis and to extend the public comment period beyond the 20 days ***EPA*** offered.

But ***EPA*** rejected such calls and its Dec. 31 announcement -- issued three weeks after the Dec. 10 close of the public comment period -- says that Ã'[a]fter carefully considering public comment on the supplemental analysis, the final risk evaluation found no unreasonable risk for these consumer uses.Ã“

And in its response to comments, ***EPA*** argued that it met the statutory and regulatory requirements that it allow at least 30 days for public comment on its draft evaluations by meeting these requirements with its first draft evaluation, released in June 2019.

Ã'[T]he draft supplemental analysis was not peer reviewed for the sake of expediency to finalize the first ten risk evaluations. TSCA section 6(b)(4)(H) requires a 30-day notice and comment period on the draft risk evaluation prior to publication of the final risk evaluation. Additionally, 40 CFR 702.49(a) provides for a 60-day public comment period. ***EPA*** complied with these statutory and regulatory requirements by providing a 60-day comment period from July 1, 2019 to August 30, 2019 on the draft risk evaluation,Ã“ EPAÃ•s response to comments document states.

Ã'Given the relatively small number of conditions of use addressed by the supplemental analysis, ***EPA*** believes that 20 days, while expedited, was sufficient to allow for public comment,Ã“ the agency says.

Byproduct Uses

While states and environmentalists were concerned that EPAÃ•s supplemental findings on byproduct uses would preempt state regulation, ACC raised a series of additional concerns, including the precedent of including byproducts in TSCA analyses.

The group argued in one set of Dec. 10 comments that evaluations should be focused on the greatest sources of risk that can be addressed under TSCA, an approach with which the Trump ***EPA*** has largely agreed.

While the trade group Ã'recognizes" that ***EPA*** developed the supplemental in response to comments from its Science Advisory Committee on Chemicals (SACC) in their peer review report and a request from a pair of trade groups representing downstream users of chemicals, ACC argues that such practice cannot become standard.

Ã'[I]ncluding trace levels of byproducts and impurities in TSCA risk evaluations should not be routine, given that byproducts and impurities are by definition not intentionally added or present for commercial purposes, and are often not present at significant levels. The risk evaluation process must continue to allow ***EPA*** to focus its resources on the conditions of use that present the greatest potential for risk,Ã" the group said.

But ***EPA*** rejected the concern, charging that TSCA section 6(b)(4)(D) gives it discretion to determine the uses of chemicals that will be evaluated in its assessments.

Ã'***EPA*** believes it is important for the Agency to have the discretion to make reasonable, technically sound scoping decisions in light of the overall objective of determining whether chemical substances in commerce present an unreasonable risk.Ã"

Ã'In some instances,Ã" the agency added, Ã'it may be most appropriate from a technical and policy perspective to evaluate the potential risks arising from a chemical impurity within the scope of the risk evaluations for the impurity itself. In other cases, it may be more appropriate to evaluate such risks within the scope of the risk evaluation for the separate chemical substances that bear the impurity.Ã"

Ã'In still other cases,Ã" the agency said, Ã'***EPA*** may choose not to include a particular impurity within the Scope of any risk evaluation, where ***EPA*** has a basis to foresee that the risk from the presence of the impurity would be Ã"de minimisÃ• or otherwise insignificant.Ã"

ACC, however, argues in a brief Jan. 3 statement that while it agrees with EPAÃ•s conclusions that 1,4-dioxane exposures donÃ•t present unreasonable risk to consumers, Ã'by failing to incorporate the best available science, the final evaluation significantly overstates the risks associated with exposure to 1,4-dioxane.Ã"

Cancer Analysis

In a separate set of comments, ACC had also questioned changes ***EPA*** made to the underlying cancer potency, or slope factor, (CSF) in the draft supplement, which it worried could result in a tightening of acceptable dermal cancer risks by as much as three orders of magnitude.

The new approach results in a stricter cancer risk estimate for dermal exposures -- important for assessing risks via use of consumer products and occupational risks.

EPA, however, argued that these changes were made as a result of SACC recommendations and public comments on the earlier draft evaluation. Among the changes made to the dermal CSF, ***EPA*** explained that they were Ã'based on reanalysis of female mouse cancer data. This data was used in the 2013 ***EPA*** Integrated Risk Information System (IRIS) assessment of 1,4-dioxane but had been initially excluded in the draft TSCA evaluation due to difficulty modeling the data.

In response to comments questioning the exclusion of this sensitive data, ***EPA*** said it obtained individual animal data from the original study to support Ã'a more robust time-to-tumor modeling approach that allows inclusion of this data.Ã"

EPA also declined to use data from a 90-day toxicology study recently published on the website of the journal Regulatory Toxicology and Pharmacology and funded by ACC, attempting to show a non-linear cancer mode of action (MOA) that could move ***EPA*** away from its conservative linear default approach to assessing cancer risk.

EPA, however, replied that the study is insufficient for this purpose, and its own Ã'fundamental conclusionsÃ" about the CSF Ã'have not changed, but . . . are supported by a more robust analysis. . . . ***EPA*** considered the recently published subchronic study submitted by ACC but did not incorporate this evidence into the MOA analysis. While the study may identify thresholds for specific effects evaluated in the study, a 90-day study that

does not include tumor endpoints is not able to demonstrate that the key events in question are necessary precursors of liver tumor formation.Ã“ -- Maria Hegstad (mhegstad@iwpnews.com)

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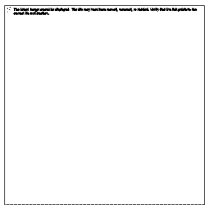

With Mallory At CEQ Helm, White House Expected To Undo NEPA Rollbacks

Inside EPA | 01/08/2021

December 24, 2020 President-elect Joe BidenÃ•s selection of Brenda Mallory to lead his White House Council on Environmental Quality (CEQ) is being widely hailed as a smart choice by environmental groups and others, especially given CEQÃ•s expected key role in undoing the Trump administrationÃ•s National Environmental Policy Act (NEPA) rollbacks.

In addition, observers expect Mallory to be influential in elevating both climate change and environmental justice (EJ) considerations in NEPA reviews for projects across the government.

Ted Boling, a longtime CEQ career official who recently went into private practice, tells Inside ***EPA*** that Mallory is Ã'extraordinarily well qualified for this role.Ã“

One of the more interesting aspects of MalloryÃ•s experience Ã'that hasnÃ•t really gotten covered is she brings such diversity of work and background in environmental law,Ã“ he notes. Ã'She knows the Antiquities Act and national monuments and with that, public lands issues. She has a broad conservation perspective as well as her background and expertise in all of the ***EPA*** media statutes like the Clean Water Act, the Clean Air Act and all the ***EPA*** jurisdictional statutes. And because she was at CEQ before, she is probably coming in with the best background qualifications of any CEQ chair, ever.Ã“

Mallory, who is Black, served as CEQ general counsel during the Obama administration and is now director of regulatory policy for the Southern Environmental Law Center, which has been active in challenging the Trump CEQÃ•s streamlined NEPA implementing rule.

She will be tasked with determining how to address that controversial policy, which CEQ completed in July and made effective in September. The rule is facing five separate district court lawsuits, with the challenge in U.S. District Court for the Western District of Virginia, Wild Virginia, et al., v. CEQ, et al., moving the fastest.

CEQ in a Dec. 21 filing in that case outlined its opposition to environmentalistsÃ• motion for summary judgment and submitted its own cross-motion, arguing that instead of waiting to see what happens when the rule is applied to Ã'on-the-ground proposals . . . Plaintiffs ask the court to review the Rule on its face. Plaintiffs speculate about what impacts future actions planned under the Rule might have. This sort of abstract facial review falls well outside the CourtÃ•s jurisdiction.Ã“

Just before the election, Boling told Inside ***EPA*** there was an Ã'active debateÃ“ about what Biden officials might do about the rule. Ã'The NEPA rule is different from other rules from the standpoint that it is a rule of administrative procedures for federal agencies that by its own terms requires the implementing agency to come up with amendments to their NEPA procedures by September 2021,Ã“ he said. Ã'So, thereÃ•s some time to manage that transition."

NEPA requires federal agencies to disclose and analyze the environmental effects of Ã'majorÃ“ actions and to consider less-harmful alternatives. The new rule makes many controversial changes to the process, including limiting which actions must undergo a NEPA review at all, limiting the time and page numbers of such reviews, and removing explicit requirements to consider Ã'indirectÃ“ and Ã'cumulativeÃ“ effects.

Climate Guidance

Boling notes that he and Mallory worked closely on a separate Obama-era NEPA guidance about how to incorporate climate change into environmental reviews. The Trump CEQ rescinded that guidance and issued a much narrower draft replacement that it has yet to finalize.

Mallory Ã'knows that area and is in a great position to assist the Biden administration, and the response to the Trump administration update to the CEQ regulations, including how to go about addressing the many concerns and claims that have been leveled against that,Ã" he says.

She is also expected to be able to deftly address EJ, issues about cumulative impacts, as well as Ã'just the management of the NEPA processÃ" including conflict resolution, he says.

Tim Male, another former CEQ official who now runs the Environmental Policy Innovation Center, where Mallory is a member of the board, calls her Ã'just an incredibly decent person. . . . She comes across as someone who is trying to make something happen but is respectful of everybody involved.Ã"

As head of CEQ, Ã'I think of her as a really important ally in the Biden-Harris administrationÃ" who will figure out what can be done under legal constraints, rather than rejecting creative approaches as not explicitly authorized by statute. Ã'That is so important right now with climate change and everything else,Ã" Male says.

More broadly, these sources and others hope that Mallory will help shepherd NEPA to better include climate considerations in a durable manner.

Male points out that one way to do this is to shift the agencyÃ•s focus more toward section 101 of the NEPA statute, which Ã'talks about minimizing our impacts,Ã" rather than section 102, which is where the CEQ rule is focused and Ã'is where all the procedures are. . . . How do you get those goals in section 101 to interact with the section 102 . . . processes created and interpreted under the current regulations?Ã" he asks.

Ã'I think the challenge . . . is thereÃ•s the real question of how do you make it a practical thing and not just hand waving. That is a huge challenge,Ã" Male says.

One NEPA expert expects the Biden CEQ to soften several streamlining measures in the new rule. For example, hard deadlines for completing environmental assessments and environmental impact statements can be replaced by requirements to elevate the review to the deputy secretary level and/or CEQ if certain deadlines slip.

This source also hopes that Mallory can instill implementing rule changes with the various agencies that conduct NEPA reviews, so it is Ã'not just agencies going back to their corners. I am excited about . . . a coordinated, strong approach because my general belief is that agencies, left to their own devices, go back to the way theyÃ•ve always been doing things, so they will need strong direction.Ã"

A second NEPA expert notes that the only agency that has proposed a rule to align its requirements with the CEQ standards is the Department of Transportation (DOT), which denied requests from public transit agencies, state highway agencies and others to extend the public comment period that ends Dec. 23.

That shows that DOT is Ã'determined to move forward with its rulemaking within this administration,Ã" the source notes. However, the proposal is a framework for DOT and doesnÃ•t necessarily directly affect its operating agencies such as the Federal Highway Administration, the transit administration and the railway administration.

One Ã'interesting problemÃ" with the CEQ rules is they are supposed to Ã'supersedeÃ" any regulation that is Ã'inconsistentÃ" after the ruleÃ•s Sept. 14 effective date. However, Ã'no agency has identified any inconsistency . . . nor has there been a response to how it is that CEQ purports to effectively overrule agency regulations that were duly adopted,Ã" the source says.

The rule also gives agencies until Sept. 14, 2021, to float updates to their own NEPA rules to conform to CEQÃ•s, which means Ã'the new administration will have almost nine months before the CEQ rules require even a proposal from agencies, and it doesnÃ•t require them to go final in any particular timeframe. That leaves time for the new administration to work a public process to figure out what it wants to do via rulemaking versus implementation guidance to make the NEPA process fit the policy agenda of the Biden administration,Ã" the source says.

Biden CEQ Strategy

During that time, Mallory will have to determine a strategy for these issues, such as whether to withdraw the

CEQ rule entirely, which would require a long and detailed process outlined by the Administrative Procedure Act. She could also opt to do something Ã'targeted as narrowly as addressing the effective date . . . or a mid-range rulemaking that amends the CEQ rule without eliminating all of its provisions because there are presumably some things in there the Biden administration will like,Ã" such as a broader role for tribes, the second NEPA expert says.

The Biden administration might also retain provisions requiring expanded scoping and directing CEQ to better manage agencies implementing NEPA.

Mallory is also likely to seek speedier reviews for environmentally friendly projects, which the source says is possible with targeted resources.

Also, Robert Verchick, president of the Center for Progressive Reform, outlined in a Dec. 17 blog post four things the Biden CEQ can do immediately, including repeal Executive Order 13807 which led the way to the new NEPA rule, restore guidance on cumulative climate impacts, restart climate adaptation planning and renew CEQÃ•s EJ focus.

Under Mallory, CEQ will Ã'need to proactively coordinate efforts across federal agencies and ensure that the existing order on environmental justice is fully and equitably implemented,Ã" Verchick writes.

News of MalloryÃ•s Dec. 16 nomination to the Senate-confirmed role prompted swift praise from many corners.

Kate Konschnik of Duke UniversityÃ•s Nicholas Institute for Environmental Policy Solutions, who spoke on a Dec. 15 web event with Mallory, tells Inside ***EPA***: Ã'This is a good day for the environment. Brenda is whip-smart, well-respected and a terrific team player.Ã"

Sen. Tom Carper (D-DE), ranking member of the Senate environment committee, added in a statement that Mallory is Ã'supremely qualified,Ã" Ã'already knows the agency inside and out,Ã" and will be able to Ã'position CEQ for the future.Ã" -- Dawn Reeves (dreeves@iwpnews.com)

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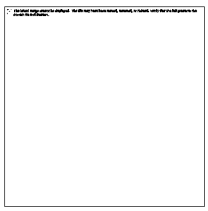

EPA Cost-Benefit Rule May Face Early Attacks By Biden Administration

Inside EPA | 01/08/2021

December 31, 2020 The publication of EPAÃ•s final overhaul of cost-benefit procedures for its air program is setting the stage for administrative and legal steps by the incoming Biden administration and its allies to reverse the policy, including claims that Trump officials improperly deemed the rule immediately effective.

That issue is just one of several objections to the rule, with critics separately deriding the agencyÃ•s effort to rely on generic Clean Air Act authority for the regulation they claim is too procedural to justify the ruleÃ•s substantive impacts.

The outgoing Trump administration is also using the same effective date strategy in multiple recent rulemakings -- including its recent decisions declining to strengthen particulate matter and ozone standards -- in a bid to shield them from easy reversal by the Biden team.

Ã'I expect the Biden administration will take steps to administratively stay the [cost-benefit] rule, to reconsider the rule, to place [expected] lawsuits in abeyance, or even take voluntary remands on litigation, because [the rule] lacks any statutory basis and was a midnight rule designed to impede them,Ã" Natural Resources Defense CouncilÃ•s (NRDC) clean air director John Walke tells Inside ***EPA***.

However, sources are emphasizing the likely need for notice-and-comment efforts and careful legal strategies if the Biden team is to avoid the kind of court rebukes that plagued Trump administration attempts to delay or block Obama-era rules.

EPAÃ•s cost-benefit rule was published in the Dec. 23 Federal Register as one of several regulations the Trump administration has been racing to finalize before President-elect Joe Biden takes office Jan. 20.

That timeline is so tight that Trump officials claimed a Ã'good causeÃ" exemption from mandates in section 553(d) of the Administrative Procedure Act (APA) that require a 30-day delay between the publication and effective date of a regulation. Otherwise, the rule could have been immediately targeted under an executive order that new administrations have routinely issued since the George W. Bush era postponing for 60 days published rules that have not gone into effect to allow for review of those rules.

Despite that defensive tactic from the Trump administration, Walke argues that its Ã'good causeÃ" claim Ã'presents the Biden administration new opportunities . . . to declare that the rule must be administratively stayed because it is untrue that the rule should have taken effect immediately.Ã"

The Trump ***EPA*** had intended the measure to be the first of several rules addressing cost-benefit requirements in multiple environmental statutes. It includes mandates for Ã'benefit-cost analysisÃ" for future rules; development of such reviews according to Ã'best practicesÃ" from the engineering, physical and biological sciences; separate reporting of co-benefits; as well as other requirements related to analysis of pollutionÃ•s health effects.

Publication of the rule triggers a 60-day deadline for court challenges.

Walke says such legal challenges are certain, though he declined to elaborate on his own groupÃ•s plans. Critics have argued the rule makes it easier for ***EPA*** to downplay or disregard rulesÃ• co-benefits, while also giving critics of strict rules another issue on which to file litigation over such regulations.

He and other critics have already criticized the agencyÃ•s reliance on its general authority in air law section 301 to justify the regulation. The provision allows the ***EPA*** administrator to Ã'prescribe such regulations as are necessary to carry out his functionsÃ" under the statute, but critics say such authority is too generic and vague to support a regulation with what they say has major implications for substantive ***EPA*** policy.

Administrative Stay

The effective date issue, however, provides the Biden ***EPA*** or a court an additional rationale to stay the regulation, Walke says. Clean Air Act section 307, which covers rulemaking and judicial review, also specifies that the administrator can stay a regulation for up to three months to allow for its reconsideration.

Walke acknowledges such a stay could spark legal pushback by proponents of the rule, but he says that 90-day window could buy time for the Biden ***EPA*** to do a rulemaking extending the ruleÃ•s effective date for a finite period while the agency moves more broadly to reverse its rule.

One wildcard that could implicate such efforts could be a line of cases generated in rebuke to aggressive Trump administration efforts to stay Obama-era rules, including the U.S. Court of Appeals for the District of Columbia CircuitÃ•s 2017 ruling in Clean Air Council v. Pruitt.

There, the court faulted EPAÃ•s efforts to rely on the section 307 language to justify a 90-day stay of 2016 methane rules for the oil and gas sector -- as a step toward scuttling the requirements -- concluding that ***EPA*** improperly relied on the provision for its stay because its reconsideration was discretionary, not mandatory.

Ã'The administrative record . . . makes clear that the industry groups had ample opportunity to comment on all four issues on which ***EPA*** granted reconsideration,Ã" the ruling said, flagging a key criterion for which reconsiderations are considered mandatory or optional.

Georgetown University law professor Lisa Heinzerling subsequently wrote that the decision and other rulings over early Trump administration efforts to scuttle Obama policies could provide ammunition against future presidents, to the extent a court concludes that future administrations were staying rules without proper due process.

The Trump administration also faced separate legal pushback for efforts to use a separate APA provision to delay the effective dates of final rules pending judicial review Ã'when justice so requires.Ã" Examples include an

October 2017 district court ruling -- concerning a Bureau of Land Management rule curbing oil and gas methane emissions -- holding that use of that APA provision is restricted to rules whose effective date has not arrived.

But incoming administrations have long invoked Clean Air Act section 307 to begin revisiting late-hour air rules by the prior administration.

The Obama administration, for example, relied on that provision in a February 2009 move to delay for 90 days the effective date of Bush-era changes to Ã'aggregationÃ" rules under the agencyÃ•s new source review program, a rule that was published Jan. 15, 2009 -- just prior to former President Barack ObamaÃ•s inauguration.

The move came in response to a reconsideration petition from NRDC, with the Obama ***EPA*** deeming at least one of the issues raised by the group was Ã'of central relevanceÃ" to the outcome of the rule and not addressed during the comment period.

The Bush administration, unlike the Trump administrationÃ•s recent rules, followed the APAÃ•s requirement for a 30-day delay in the effective date for that regulation.

The cost-benefit rule is just one of several rollbacks subject to expected or pending litigation, with the Biden team also in a position to stop ***EPA*** defense of such rollbacks in court and agree to revisit them.

In this vein, Walke says he would not be surprised to see the Biden ***EPA*** in administrative or judicial proceedings concede the lack of statutory authority for the agencyÃ•s regulations -- a step that is unusual for agencies typically trying to assert their authority. He argues the Trump ***EPA*** had an Ã'outlandishÃ" reliance on authorities such as air act section 301 in the cost-benefit rule, as well as other Ã'housekeepingÃ" authorities ***EPA*** cited to justify its controversial science Ã'transparencyÃ" rule.

Ã'An administration truly committed to the agencyÃ•s mission should not blink at throwing these claims under the bus,Ã" he said. -- Doug Obey (dobey@iwpnews.com)

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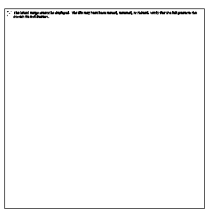

EPA Finalizes Criticized Asbestos Evaluation But Agrees To Narrow Focus

Inside EPA | 01/08/2021

December 31, 2020 ***EPA*** has finalized without significant change its long-awaited TSCA evaluation of asbestos, reaching the same unreasonable risk conclusions as its widely criticized draft version, with the most obvious change being the agencyÃ•s agreement with its advisors to narrow the name so it focuses on only the chrysotile fiber type officials assessed.

Issued late on Dec. 30, the final chrysotile asbestos evaluation finds 16 of 32 uses of chrysotile asbestos pose unreasonable risks to workers, consumers or bystanders, triggering a one-year deadline under the revised Toxic Substances Control Act (TSCA) to propose risk management rules to mitigate those risks.

But because the agency is preparing to conduct a supplemental evaluation of asbestosÃ• legacy uses in 2021, which will include additional fiber types, it sets the stage for the Biden ***EPA*** to reconsider how it wishes to evaluate and address the toxic substance -- even as officials craft risk management rules to address the unreasonable risks identified in the narrow, just-completed evaluation.

As such, the incoming administration could choose to redo the evaluation in a more holistic fashion as science advisors, environmentalists and public health advocates have urged ***EPA*** to do.

And it will have a vehicle on which to build, should it choose to take this approach: the separate Ã'Part 2Ã“ supplemental evaluation of legacy asbestos uses ***EPA*** consented to conduct after a pivotal November 2019 appellate court ruling on evaluating legacy uses in TSCA evaluations.

The evaluation is the eighth of the first batch of 10 the agency is scrambling to complete under TSCA by the Trump administrationÃ•s end.

The just-finalized assessment finds that 16 uses of chrysotile asbestos pose unreasonable risk to workers, consumers and bystanders, including Ã'processing and industrial/commercial use of diaphragms in the chlor-alkali industry, sheet gaskets used in chemical production, industrial/commercial use and disposal of brake blocks in oil industry, commercial and consumer use and disposal of aftermarket automotive brakes/linings, commercial use and disposal of other vehicle friction products and commercial and consumer use and disposal of other gaskets,Ã“ according to EPAÃ•s non-technical summary.

These unreasonable risks pose health concerns including Ã'mesothelioma, lung cancer, and other cancers from chronic inhalation.Ã“

EPA has a statutory deadline in TSCA to propose risk management rules for unreasonable risk determinations within one year of publication and to finalize those actions within two years.

EPA also concludes that the other 16 uses it included in the risk evaluation, Ã'import of raw chrysotile asbestos, the import and distribution of the chrysotile asbestos-containing products evaluated, the use and disposal of brakes for a specialized NASA transport plane, and the disposal of sheet gaskets processed and/or used in the industrial settingÃ“ did not present unreasonable risks that needed to be regulated.

Once published in the Federal Register, these no unreasonable risk determinations become final agency actions that will almost certainly be challenged in federal court, as other such findings associated with earlier evaluations of other chemicals have been.

Already, the Asbestos Disease Awareness Organization (ADAO) has blasted the chrysotile evaluation as shoddy, saying it ignores recommendations from science advisors and will delay action on legacy sources of asbestos exposure.

Ã'EPAÃ•s final risk evaluation ignores the numerous recommendations of its own scientific advisors and other independent experts by claiming that these deficiencies will be addressed in a future Part 2 evaluation,Ã“ Linda Reinstein, ADAO co-founder and president, said in a Dec. 30 statement. Ã'Based on this sleight-of-hand maneuver, the Agency has issued a piecemeal and dangerously incomplete evaluation that overlooks numerous sources of asbestos exposure and risk, and understates the enormous toll of disease and death for which asbestos is responsible.Ã“

SACCÃ•s Criticisms

EPAÃ•s unreasonable risk findings for the associated uses are unchanged from EPAÃ•s April 2020 draft evaluation -- a surprise given the damning report EPAÃ•s Science Advisory Committee on Chemicals (SACC) released following its peer review of the draft evaluation last June.

In their final report, the advisors called the draft version of the evaluation inadequate and deficient and urged officials to broaden the evaluation to consider more uses of multiple types of asbestos before finalizing it.

Ã'Overall, EPAÃ•s environmental and human health risk evaluations for asbestos was not considered adequate and resulted in low confidence in the conclusions,Ã“ SACCÃ•s Aug. 28 report states.

Among other things, SACC urged ***EPA*** to consider other asbestos fiber types and so-called Ã'legacy usesÃ“ as well as uses for which there is no longer ongoing manufacturing, but where asbestos remains in use across the United States, as in the insulation, plumbing, roofing and flooring of many older buildings.

Ã'The Committee encourages ***EPA*** to incorporate into the assessment other asbestos and asbestos-like fibers in addition to chrysotile exposure beyond the six conditions of use (COUs) evaluated. Because certain exposure sources (drinking water, talc, asbestos-containing building materials, vermiculite, etc.) are not included in this evaluation, the estimate for total exposure to asbestos is deficient,Ã“ the report states.

But SACCÃ•s report failed to capture the full extent of its concerns. Some members had even discussed whether it was possible for them to recommend that ***EPA*** discard the draft and re-start fresh with a new, broader

evaluation that included other asbestos fiber types and legacy uses to convey a more complete picture of risks associated with exposure to asbestos.

However, SACC Chairman Ken Portier, a biostatistician retired from the American Cancer Society, told the panel that such a recommendation would Ã'border on a policyÃ" recommendation the SACC could not make, because SACCÃ•s charge is scientific, not policy.

Despite the SACCÃ•s urgings, ***EPA*** has stuck with its plan to conduct two separate evaluations of asbestos, a decision Trump ***EPA*** toxics chief Alex Dunn defended in an interview with Inside TSCA last June.

Ã'The agency believes this is the most health-protective path forward,Ã" she said, before arguing that a supplemental risk review would Ã'ensure a higher quality evaluation of legacy uses and associated disposalsÃ" and that Ã'halting workÃ" on the pending draft risk evaluation to include legal considerations would Ã'delay work on any risk management regulations that would be needed to address unreasonable risk presented in final risk evaluations."

Response To Comments

In its response to comments document, ***EPA*** echoed DunnÃ•s message, saying it will Ã'evaluate legacy asbestos uses and associated disposals of those uses in Part 2 of the Risk Evaluation for Asbestos.Ã"

Ã'Prolonging finalization of the risk evaluation for chrysotile asbestos (Part 1 of the Risk Evaluation for Asbestos), by expanding the document to also evaluate legacy uses (where only use and associated disposal is present) would significantly delay needed risk management to address COUs where unreasonable risk is present for chrysotile asbestos.Ã"

Instead, ***EPA*** agreed to the SACCÃ•s recommendation that if it did not broaden the evaluation, it rename it because the original title was misleading, as it implied a comprehensive study of risks from several forms of asbestos. Ã'***EPA*** agrees with the SACC and has changed the name . . . to Risk Evaluation for Asbestos Part 1: Chrysotile Asbestos.Ã"

EPAÃ•s Dec. 30 announcement explains the agency has Ã'started planningÃ" for what it calls Ã'part 2 of the risk evaluation for asbestos and will engage stakeholders as part of and following development of the draft scope document to identify any additional reasonably available information that is relevant to part 2. The draft scope document will be made available for public comment mid-year 2021,Ã" ***EPA*** says.

EPA also notes that the U.S. Court of Appeals for the 9th CircuitÃ•s decision in Safer Chemicals Healthy Families v. ***EPA***, which requires the agency to assess legacy uses, is the reason for crafting the supplement evaluation. The agency says the supplement will focus on Ã'[l]egacy uses and associated disposals of asbestos.Ã"

The agency says the second evaluation will address Ã'chrysotile and the other five fiber types of asbestos described in the TSCA Title II definition: crocidolite (riebeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite or actinolite.Ã"

Portier noted at SACCÃ•s meeting last June that one important issue to consider in the legacy evaluationÃ•s scope will be whether it includes exposures to asbestos as a contaminant or a byproduct.

Stan Barone, deputy director of the Risk Assessment Division within EPAÃ•s toxics office, told Portier the agency has not decided whether to evaluate risks from contaminant uses in the legacy evaluation.

Ã'WeÃ•re looking at this, trying to determine what are the conditions of use that are legacy uses, regardless of intentional or unintentional inclusion in products,Ã" he told SACC members. Ã'Those are some difficult conversations . . . that we will have to discuss internally. We will put out a scope for public comment and that will include what the levels of exposure are and what the consequences of those exposures are.Ã" -- Maria Hegstad (mhegstad@iwpnews.com)

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EPA Expands TSCA Waivers In Final PBT Rules, Opening Door To Suits

Inside EPA | 01/08/2021

December 24, 2020 ***EPA*** has issued precedent-setting rules governing five persistent, bioaccumulative and toxic (PBT) chemicals that generally follow its 2019 proposal, though the final measures regulate hexachlorobutadiene (HCBD), which the agency had initially sought to exempt, while also granting new or expanded use waivers for several other chemicals.

As such, the rules -- which Trump ***EPA*** officials have touted as setting a precedent for future risk management actions -- will almost certainly face litigation from environmentalists, who have argued strenuously against the kind of broad use waivers the agency has granted.

Ã'We strongly urge ***EPA*** to ban all uses of the five PBT chemicals, subject only to narrow and time-limited exceptions to the extent authorized by TSCA section 6(g),Ã" they wrote in 2019 comments.

Given such threats, the rules will also likely feature in the incoming Biden administrationÃ•s efforts to rescind -- or strengthen -- Trump administration regulations.

EPA Administrator Andrew Wheeler Dec. 21 signed the five PBT rules, meeting a statutory deadline in section 6(h) of the reformed Toxic Substances Control Act (TSCA) to take final action regulating chemicals that it previously identified as PBT.

Exiting ***EPA*** toxics chief Alex Dunn has said the proposed versions of the PBT rules are Ã'a great example of what I think you will see more of from EPAÃ" as that agency moves to regulate unreasonable risks from a range of existing chemicals it is evaluating.

She noted the proposal includes Ã'a rangeÃ" of chemical management strategies, including concentration restrictions and container management strategies. Ã'I believe it shows that when we're talking about managing exposure and risk, there are lots of ways to do it under TSCA,Ã" she told the Environmental Law Institute in 2019.

As such, the rules generally maintain proposed bans on the Ã'processing and distribution in commerceÃ" of four PBTs, subject to various exemptions for certain sectors and uses: phenol, isopropylated phosphate, or PIP (3:1), a flame retardant, decabromodiphenyl ether (DecaBDE), another flame retardant, 2,4,6-tris(tert-butyl)phenol (TTBP), used as an additive in fuels, oils and hydraulic fluid, and Pentachlorothio-phenol (PCTP), used to make rubber more pliable in industrial uses, and in some consumer items like golf balls.

And while ***EPA*** dropped its plan to take no action at all on HCBD -- which is toxic to various plants and animals and a possible human carcinogen, but used as a solvent and in the manufacture of rubber compounds and lubricants -- the agency exempted from regulation the production of HCBD as a byproduct in chlorinated solvent manufacturing, and its disposal by incineration -- which it says make up Ã'mostÃ" occurrences of the chemical.

Ã'***EPA*** is prohibiting the manufacturing (including import), processing, and distribution in commerce of HCBD and HCBD-containing products or articles, except for the unintentional production of HCBD as a byproduct during the production of chlorinated solvents, and the processing and distribution in commerce of HCBD for burning as a waste fuel,Ã" reads EPAÃ•s summary of the rule.

The rule itself notes that those exemptions will allow most industrial activity related to HCBD to continue, while only barring new applications.

Ã'This final rule allows the current, highly regulated, unintentional production as a byproduct and incineration and distribution for incineration of such byproduct to continue and ensures that other uses do not commence,Ã" the HCBD rule says.

Environmentalists had urged ***EPA*** to instead regulate those existing uses as well as prohibiting new ones -- a stance some in industry expected the agency would adopt based on its recent moves to tighten final TSCA evaluations in response to comments alleging that the proposed versions were not conservative enough.

Use Exemptions

EPA in its new rule instead says any exposures to HCBD in the process of disposal or from air releases are properly regulated under waste-disposal laws or the Clean Air ActÃ•s air toxics program -- maintaining the Trump administrationÃ•s position, opposed by environmentalists, that TSCA regulations should address only avenues of chemical exposure not already considered by other programs.

Ã'In view of these comprehensive, stringent programs for addressing disposal and air releases, ***EPA*** determined that it is not practicable to impose additional requirements under TSCA on the disposal and air releases of the HCBD byproduct,Ã" the rule says.

Similarly, the other four PBT rules that ***EPA*** signed on Dec. 21 either maintain the agencyÃ•s proposed limits on the chemicalsÃ• use rather than tightening them or add new exclusions in response to industry requests -- with most of those in the rules governing decaBDE and PIP (3:1).

For example, the PIP 3:1 rule maintains proposed exemptions for aviation hydraulic fluids, lubricants and grease and auto parts, while adding exemptions for military hydraulic fluids, aerospace parts, cyanoacrylate glue, locomotive and marine air filters, and Ã'sealants and adhesives.Ã"

And in response to the company FujifilmÃ•s petition for a critical use exemption that would allow continued use of already-produced film made with PIP (3:1), the agency agrees to delay its prohibition on that sector until Jan. 1, 2022, reasoning that Ã'an immediate prohibition would require the commenter to dispose of the product all at once thereby increasing the incremental exposure from the disposal of film articles.Ã"

However, that provision could draw a legal challenge from environmentalists. Several groups warned that granting FujifilmÃ•s request, or a separate petition filed by the firm Hempel related to the substanceÃ•s use in flame-retardant coatings that the agency apparently did not address, would be unlawful without a new notice-and-comment rulemaking process.

Meanwhile, the decaBDE rule adds a two-year waiver for use of the substance in wire and cable insulation for nuclear power plants, and a waiver for replacement motor vehicle parts through 2036 or the end of the vehiclesÃ• service lives, Ã'whichever is earlier.Ã"

It maintains a proposed three-year waiver for use of the chemical in new aerospace vehicles -- and adds a lifetime waiver on parts for those vehicles; an 18-month waiver for curtains in the hospitality industry; and a permanent waiver for recycling plastic made with decaBDE before its ban Ã'so long as no new decaBDE is added during the recycling or production process.Ã"

Lower Threshold

For the 2,4,6-TTBP rule, ***EPA*** originally proposed to ban distribution of products containing the chemical in containers less than 55 gallons in volume, as a way to Ã'effectively prevent the use of 2,4,6-TTBP as a fuel additive or fuel injector cleaner by consumers and small commercial operations (e.g., automotive repair shops, marinas)."

The final rule maintains that goal but makes it more lenient in two ways: by dropping the threshold for regulation to 35 gallons, and by adding that only compounds containing at least 0.3 percent 2,4,6-TTBP by weight are covered.

However, the final version also adds a ban on any Ã'oil or lubricant additiveÃ" containing at least 0.3 percent of the substance, Ã'regardless of container size.Ã"

It is unclear whether that will satisfy critics, such as House Energy and Commerce Committee Chairman Frank Pallone (D-NJ), who called the original plan limiting container size Ã'a shockingly glib proposal that provides the chemical industry with a glaring loophole for continued largescale use.Ã"

Finally, the PCTP rule maintains -- apparently without substantive changes -- the proposed ban on manufacture and sale of items containing at least 1 percent PCTP. -- David LaRoss (dlaross@iwpnews.com)

Amid Calls For Rescission, Wheeler Defends Science Rule From BackersÃ• Concerns

Inside EPA | 01/08/2021

January 5, 2021 ***EPA*** Administrator Andrew Wheeler is seeking to address concerns from conservative supporters that the agencyÃ•s controversial science transparency rule is too narrow and gives officials discretion to exempt critical studies from its requirements even as environmentalists and other critics ramp up calls for the incoming Biden ***EPA*** to rescind it.

The rule Ã'ensures that all pivotal science go through independent peer review; that is consistent with guidance from the Office of Management & Budget. Finally, the rule requires the agency to clearly identify and make publicly available science performing a significant regulatory action,Ã" he told the free-market Competitive Enterprise Institute (CEI) Jan. 5 during an online forum.

His comments came in response to a range of concerns from CEI officials that the final rule, slated for publication in the Federal Register Jan. 6, is narrower in scope than earlier versions, only applies prospectively and grants the ***EPA*** administrator broad discretion to waive its requirements.

For example, Myron Ebell, director of CEIÃ•s Center for Energy and Environment, who led the Trump transition at ***EPA*** in 2016-17, said the rule fell short of goals for raising the bar on science underlying regulatory decisions even as he credited Wheeler and ***EPA*** with fixing problems identified in earlier versions.

Ebell described the final rule as Ã'broaden[ing] application but narrow[ing] what it does. I think for people looking for [a] magic bullet to solve the crisis of scientific integrity and the reproducibility crisis, this rule may be a disappointment,Ã" he said.

Ã'What people need to understand is this is an incremental step forward,Ã" he added.

As first proposed in 2018, the measure -- a top priority for groups like CEI -- would require regulatory decisions to incorporate only studies and models whose underlying information is publicly available. But the effort drew stiff criticism from environmentalists and others, who charged the approach is unlawful and would severely limit the agencyÃ•s ability to rely on a range of studies needed to justify stringent standards.

The final version is narrower, requiring ***EPA*** Ã'to give greater consideration to studies where the underlying dose-response data are available in a manner sufficient for independent validationÃ" when it is promulgating Ã'significantÃ" regulatory actions or developing Ã'influential scientific information."

The rule also requires ***EPA*** to identify and make publicly available the science that underlies policy proposals, renews peer review requirements for Ã'pivotal science,Ã" and provides criteria for when the Administrator can exempt certain studies from the ruleÃ•s requirements.

Even so, the rule will affect programs agency-wide because dose-response data lies at the center of many agency decisions, ranging from national air standards to drinking water standards to pesticide registration decisions and Toxic Substances Control Act regulations.

Despite the final ruleÃ•s narrowed reach, environmentalists and their allies are renewing their calls for the incoming Biden administration -- which is expected to issue an executive order on scientific integrity -- to quickly kill the measure.

Ã'Unwinding this action must be at the top of the agenda for the new leadership at ***EPA***, because it undermines everything else the agency wants and needs to do,Ã" Vijay Limaye, a climate and health scientist at the Natural Resources Defense Council (NRDC) said in a statement. Ã'We look forward to working with the incoming Biden administration to get back to using sound science to guide policies that protect our health and combat the climate crisis,Ã" he added.

AdministratorÃ•s Discretion

But the rule is also drawing concern from other CEI officials, especially its provision granting future ***EPA*** administrators with discretion to waive the ruleÃ•s requirements if they certify that such a study is necessary.

I Ã'can see an argument for it and it also put a little bit of a shiver in my spine,Ã" CEI President Kent Lassman, who moderated the forum, told Wheeler.

In response, Wheeler said he included the provisions in the rule to ensure that the agency can still use a study if it is Ã'really fundamental to regulation and that information is not available to the public.Ã"

He did so by creating the waiver process, while adding criteria in the final version of the rule that he believes will limit use of the waiver authority.

The final rule details Ã'a number the stepsÃ" the administrator has to consider before waiving the ruleÃ•s requirements and would have to Ã'explain why they are allowing the studyÃ" in the preamble of any future rule that is based on a study that does not comply with the science ruleÃ•s requirements, Wheeler said.

Ã'I understand that gives you a shiver . . . that is a difficult decision. I imagine it will be used sparingly in the future,Ã" he said, adding, Ã'Going forward what is different, is the administrator will have to explain the use of pivotal science without the data being available. Just that explanation will help you and others.Ã"

Wheeler also sought to address concerns that pivotal science that has formed the basis for past national air quality standards, namely the Harvard 6 Cities epidemiology study on particulate matter, could not be relied on when ***EPA*** reviews those rules in future.

Ã'No scientific study based on this rule will be absolutely ruled out. The older studies can still be used and no doubt will be,Ã" he said. He noted that the 6 cities studyÃ•s underlying information has been available in restricted fashion, and as such would meet the final ruleÃ•s requirements for use.

Asked whether the rule could be a target of the Congressional Review Act (CRA) because it is being finalized so close to the end of the Trump AdministrationÃ•s term in office, Wheeler argued that the rule is not subject to CRA because the rule Ã'is an internal housekeeping regulationÃ" and Ã'not a major regulation as far as costs. Under both prongs, this would not be subject to CRA.Ã"

Wheeler also said that as far as he is aware, the President-elect Joe BidenÃ•s transition team has not asked any questions regarding the rule.

Addressing earlier criticisms from environmentalists and Democrats that earlier proposals could illegally require ***EPA*** to expose individual health information collected in epidemiology studies or confidential business information (CBI), Wheeler said the rule Ã'protects personal information and confidential business information and does not require the release of either, despite misrepresentations in the press."

Ã'The rule does not categorically exclude or prohibit the use of any study but rather requires ***EPA*** to give greater consideration or weighting to studies where the underlying dose-response data are available in a manner sufficient for independent validation. This can include data that are publicly available or very importantly, are available through restrictive access,Ã" he said. -- Maria Hegstad (mhegstad@iwpnews.com)

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New Jersey DEP Chief McCabe Faults EPA For Lack Of PFAS Class Policy

Inside EPA | 01/08/2021

January 5, 2021 Retiring New Jersey environment chief Catherine McCabe is faulting what she calls a lack of ***EPA*** leadership as one of two major obstacles that explain why the state cannot yet regulate per- and polyfluoroalkyl substances (PFAS) as a class, adding that the other hurdle is differences among the chemicals that make a single rule difficult.

McCabe, who is retiring Jan. 15 as commissioner of the New Jersey Department of Environmental Protection (DEP) after three years under Gov. Phil Murphy (D), discussed PFAS, climate change and her stateÃ•s first-in-the-nation environmental justice law during a recent podcast, Ã'The Enforcement Angle: NJDEPÃ•s Catherine McCabe,Ã" sponsored by the Environmental Law Institute. Justin Savage, an attorney with Sidley Austin, interviewed her.

Prior to serving as DEP commissioner, McCabe briefly was acting ***EPA*** administrator until Scott Pruitt, the Trump administrationÃ•s first agency chief, was confirmed by the Senate. McCabe worked at ***EPA*** since 2005, serving as deputy regional administrator for ***EPA*** Region 2, and before that worked at the Department of Justice for 22 years, including holding a top role in its environmental enforcement section.

DEP was the first state regulator to set a drinking water standard, or maximum contaminant level (MCL), for a particular PFAS and has been seen as a leader among states in regulating the chemicals in the class.

The state sought to Ã'devise a way of regulatingÃ" PFAS as a class, McCabe said. But the agency faced Ã'two major obstacles to that effortÃ"; these were the differences among the chemicalsÃ• makeup themselves and EPAÃ•s lack of leadership on the class of chemicals, she said. PFAS are a class of thousands of chemicals that have been widely used for years in consumer, commercial and industrial products for their non-stick and other qualities. But they are driving significant health concerns due to widespread contamination and studies linking them to a range of disease outcomes.

New Jersey has set drinking water limits for perfluorononanoic acid (PFNA), perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS) -- three out of thousands of PFAS -- but McCabe called the work to address such chemicals both on a regulatory and enforcement basis Ã'quite a heavy lift,Ã" requiring extensive scientific research and detailed rule-writing, as well as legal defense of the standards. Excellent scientific expertise in-house and within the stateÃ•s Drinking Water Quality Institute and Department of Health Ã'enabled us to be the first state in the nation to start adopting those MCL standards,Ã" she said.

But she lamented industryÃ•s continual development of replacement PFAS Ã'as quickly as we catch on with the problems of the existing chemicals.Ã" She cited as an example GenX as a replacement to the now phased-out PFOA.

She said it would Ã'be best, frankly, if all of these chemicals could be regulated as a class and if ***EPA*** would set the standards on a national basis,Ã" creating Ã'science-based standards, of course,Ã" she added.

But, she said, scientists say that the different kinds of PFAS are so different one standard will never cover all of them. Ã'You really have to analyze them individually, which is a huge amount of work.Ã"

The second obstacle has been EPAÃ•s lack of leading the effort on PFAS, with the agency taking a Ã'back seatÃ" on PFAS in recent years, she said. She added that most states are not set up to handle the scientific and technical challenges of setting PFAS standards. Ã'ThatÃ•s really what ***EPA*** should be doing,Ã" she said.

She signaled that New Jersey cannot advance regulation of PFAS as a class alone, and she expressed hope that the incoming Biden administration will make Ã'more of an effortÃ" than the Trump administration Ã'because this is a contamination problem that is a serious threat to our drinking water supplies all around the country.Ã"

The Trump administration has been criticized for its lack of regulatory efforts on PFAS, with states largely taking the lead on drinking water and groundwater regulations and policy.

Ã'New Jersey is proud to lead and to start the way, but we cannot do this alone,Ã" she said.

President-elect Joe BidenÃ•s environmental justice plan, released during BidenÃ•s campaign, estimated that the drinking water of as many as 110 million Americans may be contaminated with PFAS, and pledged to Ã'tackle PFAS pollutionÃ" through setting a Superfund hazardous substance designation, establishing drinking water limits, Ã'prioritizing substitutes through procurement, and accelerating toxicity studies and research on PFAS.Ã"

Environmental Justice

During the podcast, McCabe also touted New JerseyÃ•s recent enactment of a landmark environmental justice (EJ) law, saying EJ advocates in the state have called it Ã'the holy grail.Ã" She said with the law enacted, Ã'this will very much be a new day for environmental justice in New Jersey,Ã" and lead to more fairness in EJ communities, and she hopes other states will follow New JerseyÃ•s example.

EPAÃ•s head of the Office of Environmental Justice, Matthew Tejada, in November hailed the new lawÃ•s significance. Ã'[I]t cannot be underestimated how important that law is, not only in its present moment for really setting a standard for the seriousness with which environmental justice can be taken up in law but really [because of its] historical significance for taking on issues such as cumulative impacts and disproportionality, and actually putting them in the forefront . . . of fundamental decisions and responsibilities of government,Ã" he said.

McCabe said the new law authorizes DEP to take EJ into consideration when issuing permits under state environmental statutes for a variety of Ã'noxious facilitiesÃ" that are often located in EJ communities, such as incinerators, scrap metal facilities, solid waste transfer stations, large recycling facilities, sewage treatment plants, sludge processing facilities and landfills.

Under the new law, companies seeking to build or expand such facilities or renew permits for existing facilities in an EJ community must prepare an environmental justice impact statement (EJIS), she said. These will identify existing sources of pollution, other public health stressors and the impact of the new or expanded facility, she said.

DEP must deny a permit for a new facility if the EJIS shows cumulative adverse public health impacts from it are disproportionately high compared to other neighborhoods, she said. While DEP cannot deny the permit for a renewal or an expansion, it can add conditions to the permit to protect public health, she said. The cumulative public health impact evaluation overlays the usual regulatory standards the state enforces, she said.

DEP accepted public comments on developing regulations under the new law until last Dec. 14. The law takes effect once DEP issues regulations.

Climate Change

Savage also asked about the role climate change is expected to play in affecting DEPÃ•s enforcement priorities and mission.

McCabe said she sees it as having a large role in the future, with the state preparing regulations to lower carbon dioxide emissions, noting it has the power to do so under state law. Enforcement of those rules will be a high priority, she said.

Ã'Methane emissions from landfills are also on our enforcement targeting screen, and weÃ•re phasing out [hydrofluorocarbons (HFCs)] here in New Jersey, and we will be serious about enforcing that requirement,Ã" she said. HFCs, a class of chemicals used for refrigeration and other purposes, have a high global warming potential.

She said New Jersey will continue to Ã'crack downÃ" on mobile source emission violations, such as the common practices of disconnecting vehicle emission controls and truck idling in EJ neighborhoods.

On the adaptation side of climate change, she said DEP is already undertaking a Ã'stepped-up approachÃ" to addressing violations of land use rules in climate vulnerable areas and is looking to tighten land use restrictions in areas that will be more vulnerable to flooding. She said the state would stress strong enforcement of those rules. And she said that while the state already focuses heavily on drinking water, it will be more important to protect as climate change droughts start to bring water supply limitations. -- Suzanne Yohannan (syohannan@iwpnews.com)

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5th Circuit Upholds EPA Discretion In Texas Ozone Designations Case

Inside EPA | 01/08/2021

December 24, 2020 The U.S. Court of Appeals for the 5th Circuit is upholding EPAÃ•s discretion to change statesÃ• designations of which areas attain or violate federal air quality standards, finding against Texas and also environmentalists in a challenge to San AntonioÃ•s ozone status that the agency warned could Ã're-writeÃ" the Clean Air ActÃ•s designation process.

In its Dec. 23 unanimous ruling in State of Texas, et al., v. ***EPA***, et al., a three-judge panel of the court finds that ***EPA*** lawfully rejected TexasÃ• attainment designation for Bexar County, which includes San Antonio, determining that the county is in nonattainment for ozone national ambient air quality standards (NAAQS). States and industry typically strive to avoid nonattainment designations because such status brings stricter air pollution control mandates.

The court further rejects arguments from Sierra Club that ***EPA*** should have also designated outlying counties in non-attainment by virtue of their contribution to air pollution in San Antonio.

The suit concerns designations for EPAÃ•s 2015 ozone NAAQS, set at 70 parts per billion (ppb), and sets binding precedent within the 5th Circuit states of Louisiana, Mississippi and Texas. While it centers on a specific area, the decision bolsters EPAÃ•s authority to ultimately determine NAAQS attainment, which is key to the NAAQS program.

Judge Jennifer Walker Elrod, in an opinion joined by Judges Edith Brown Clement and Kyle Duncan, finds that the ***EPA*** administrator has discretion to make changes to statesÃ• designations as the administrator Ã'deems necessary,Ã" and that EPAÃ•s actions were therefore reasonable and lawful.

TexasÃ• novel argument in the suit was that ***EPA*** can only make changes where it is essential, and that the state can rely on modeling of future air quality to make a determination of NAAQS attainment. But ***EPA*** says this interpretation is incorrect, and during briefing in the suit said that TexasÃ• approach would overturn the agencyÃ•s long-established practice of using actual air quality monitoring data from past years to determine NAAQS attainment, re-writing the air law.

Ã'If we were looking at the word Ã"necessaryÃ• in isolation, we might agree with Texas. However, the word does not exist in a vacuum. It is part of a larger scheme, one which grants discretion to the Administrator to make modifications that it Ã"deems necessary,Ã•Ã" the 5th Circuit opinion says.

Elrod adds: Ã'it is clear that Congress has delegated discretionary authority to ***EPA*** to determine when adjustments should be made.Ã"

With respect to EPAÃ•s reasoning when finding Bexar County in nonattainment, Elrod rejects TexasÃ• novel position that under the Dictionary Act, when the air law says that an area that Ã'does not meetÃ" the NAAQS should be designated nonattainment, this should include areas that fail to meet the NAAQS now or will fail to do so in the future.

Ã'We think that the provision of the Dictionary Act cited by Texas does not apply here. The future-tense presumption applies only where context does not indicate otherwise. Context makes it clear in this case that the designation process considers only the present tense,Ã" Elrod writes.

Ã'Texas contends that it would have attained the 2015 NAAQS by the year 2020 withoutÃ" crafting a state

implementation plan for compliance Ã'anyway and that this is the distinguishing characteristic. The stateÃ•s argument, however, is based not on fact, but on supposition. The statute uses concrete terms: either a county does or does not meet the NAAQS,Ã" the opinion adds.

Environmental Group Claims

Elrod then turns to Sierra ClubÃ•s argument that ***EPA*** unlawfully excluded Atascosa, Comal and Guadalupe counties from the San Antonio nonattainment area.

With regard to venue, Elrod again finds that the 5th Circuit is the appropriate court in which to challenge these designations, rejecting Sierra ClubÃ•s assertion that the designations are part of a Ã'nationally applicableÃ" action and therefore should be heard in the D.C. Circuit, which hears litigation on rules that are nationally applicable, or which ***EPA*** has declared to have Ã'nationwide scope or effect.Ã"

Rather, the instant case is only locally or regionally applicable, and therefore belongs in the regional appeals court, Elrod says. The D.C. Circuit already accepted TexasÃ• and EPAÃ•s position that the case belongs in the 5th Circuit, and transferred the case to the regional court.

Elrod then rejects Sierra ClubÃ•s argument that ***EPA*** should have designated the outlying counties in nonattainment because they contribute 1 percent or more of the NAAQS limit -- here, 0.07 ppb -- to Bexar CountyÃ•s ozone levels.

EPA set the 1 percent threshold itself as one criterion for determining if states Ã'contribute significantlyÃ" to other statesÃ• problems in meeting the NAAQS under the air lawÃ•s separate Ã'good neighborÃ" provision.

However, Elrod writes, under its NAAQS designation provisions, Ã'the text of the Clean Air Act does not require ***EPA*** to adopt a one-percent threshold. Indeed, the Act contains no numeric threshold regarding attainment designations whatsoever.Ã" And with regard to the good neighbor provision, Ã'the proposed one-percent threshold does not appear in the text of that provision either. Even if it did, that provision and its interpretation have no bearing on whether ***EPA*** must now apply a numeric threshold to its initial attainment designations.Ã"

The agency clearly laid out its rationale for its decisions on the outlying counties, using its traditional multi-factor test that includes air quality data, emissions and emissions-related data, meteorological data, geography/topography and jurisdictional boundaries, Elrod finds. -- Stuart Parker (sparker@iwpnews.com)

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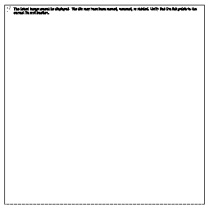

Carper Calls For EPA To Strengthen Recycling Strategy, Broaden Scope

Inside EPA | 01/08/2021

December 24, 2020 Sen. Tom Carper (D-DE), ranking member on the Senate Environment & Public Works (EPW) Committee, and state groups are calling on ***EPA*** to significantly strengthen its national recycling strategy, saying the agency should expand the plan to emphasize reduction and reuse and move to adopting product stewardship policies.

EPAÃ•s draft National Recycling Strategy, which it took comment on through Dec. 4, Ã'is largely a woefully inadequate and unimaginative approach to addressing our countryÃ•s wide-ranging and complex recycling problems,Ã" Carper says in recent comments to the agency. He argues that ChinaÃ•s restrictions on imports of recyclables from the United States and the increasing impacts of waste on the environment and public health Ã'demand a creative and aggressive strategy to embrace a circular economy and rethink outdated attitudes and practices regarding waste and waste management."

The senator says these challenges offer a chance to reimagine recycling, to delineate an aggressive strategy, and to back local and state efforts. The strategy should embrace circular economy elements; acknowledge the need to enhance markets for recyclable materials; impose producer responsibility for productsÃ• lifecycle impacts and costs, reimagine public education in the context of a circular economy plan; and create incentives to end the manufacture and use of materials that cannot be reused or recycled, he says.

Carper also argues that EPAÃ•s heavy focus on enhancing education on recycling and pushing infrastructure investments are Ã'woefully inadequate responses to a huge national and global problem,Ã" saying that instead Ã'better markets are the critical ingredient to increasing recycling rates.Ã" He notes that EPAÃ•s third objective does call for improved markets for recycled material. The strategyÃ•s other two objectives are reducing contamination in waste meant for recycling, increasing facilitiesÃ• processing efficiency.

He says the strategy should also embrace Ã'policies that would have product producers bear the costs associated with product recycling and disposal -- costs now borne by taxpayers.Ã"

And he calls for setting a more ambitious recycling rate goal, beyond the 50 percent by 2030 that ***EPA*** recently announced as a target. The United StatesÃ• current recycling rate is 35 percent.

StatesÃ• Suggestions

State groups are also suggesting ***EPA*** take more aggressive positions. The Northeast Waste Management OfficialsÃ• Association (NEWMOA), which represents eight northeastern states, in Dec. 3 comments commends ***EPA*** for drafting the proposed strategy, but says it lacks clarity about how it will be implemented and how it will support an economically sustainable recycling system.

The group notes municipalitiesÃ• strapped financial circumstances as recycling costs have contributed to financial challenges, and local and state programs, particularly during the pandemic, lack resources.

NEWMOA contends that the United States Ã'needs to consider alternative recycling policies to advance and increase recycling, improve efficiency in the system, and relieve local and state budgets.Ã" It suggests national policy approaches to improve the recycling system, such as a national bottle bill, separately collecting glass, national mandatory minimum post-consumer recycled content standards and bans on certain materials such as styrofoam and single-use plastic bags.

Further, NEWMOA also suggests the agency consider the possibility of national extended producer responsibility (EPR) programs, contending manufacturers and brand owners should play a larger role in management of materials at end-of-life as they make decisions about product content and packaging. A national EPR program would be preferable to a patchwork of state programs, it says.

Both NEWMOA and Carper also suggest ***EPA*** address source reduction and reuse. Ã'These are equally critical [to recycling] and economically important approaches to reducing disposal of solid waste,Ã" NEWMOA says.

Another state group, the Association of State & Territorial Solid Waste Management Officials (ASTSWMO), submitted Dec. 4 comments on behalf of its Materials Management Subcommittee. The subcommittee tells ***EPA*** it should Ã'clearly articulate how the economics of recycling will be sustainable in the future, addressing the current high costs to municipalities/taxpayers and the current low market value of recycled materials."

The group also reiterates elements it recommended earlier this year that it says should be part of the recycling strategy, including a plan for infrastructure improvements in order for recycled materials to meet domestic market specifications; a plan for developing and improving domestic markets to use recycled materials; a plan to assist state and local governments in reducing contamination of recyclables; and a plan for greater consistency in tracking and reporting recycling activities on a regional and national level.

Ã"Equally CriticalÃ• Objectives

The Product Stewardship Institute (PSI), which advocates for EPR and includes state and local governments among its members, says in Dec. 4 comments that all three of the objectives in EPAÃ•s draft recycling strategy Ã'are equally criticalÃ" and can be advanced by employing EPR.

Ã'Unfortunately, as currently written, none of the draft actions place specific responsibility on producers and brand-owners to cover the end-of-life management costs of the packaging and paper products they place on the U.S. market.

Ã'We urge the ***EPA*** to consider a national framework for EPR that would obligate producers to take responsibility for their products at the end of their useful life, cover the costs of public education and recycling infrastructure improvements, and include an Ã"eco-modulatedÃ• fee system to incentivize upstream packaging design innovation."

In addition, PSI urges ***EPA*** to Ã'add a fourth objective to this strategy to address reuse and source reduction and the development of a circular economy. The group notes that reduction is preferable because it lowers environmental impacts from disposal as well as from production, manufacturing, packaging and transportation. -- Suzanne Yohannan (syohannan@iwpnews.com)

Wheeler Downplays Health Effects Data In Rule Retaining Ozone NAAQS

Inside EPA | 01/08/2021

December 23, 2020 ***EPA*** Administrator Andrew Wheeler is defending his just-announced final decision to retain the agencyÃ•s current federal ozone standards, fending off criticisms from environmentalists, former agency advisers and others that the Trump administration downplayed evidence of adverse health effects in order to avoid tightening the limits.

And he confirmed the rule will be immediately effective upon publication in the Federal Register, expected in one or two weeks. This means that the rule will take effect before the inauguration of President-elect Joe Biden on Jan. 20, making the decision harder for any attempt by his administration to reverse, and echoing a Dec. 18 final rule to retain the suite of particulate matter ambient air limits that took effect immediately upon publication.

Speaking to reporters Dec. 23 shortly after he signed the final rule to keep the existing ozone national ambient air quality standards (NAAQS) in place, Wheeler hailed the rule as only the second time in its history the agency has met its Clean Air Act-mandated five-year deadline to review NAAQS standards.

Ã'We believe the best call at this time is to retain the existing standard,Ã" Wheeler said. ***EPA*** will keep both the Ã'primary,Ã" or health-based limit, and the Ã'secondary,Ã" or welfare-based limit, unchanged at the same level of 70 parts per billion (ppb) set by the Obama ***EPA*** in 2015. The first time ***EPA*** met the deadline was in 1997, with an ozone NAAQS rule.

Environmentalists and public health organizations are critical of the decision, with prominent groups such as the American Lung Association (ALA) calling for a NAAQS as stringent as 60 ppb. Critics of the decision to leave the existing standards in place might file legal challenges after the rule appears in the Register.

Many of these groups also urged the Obama ***EPA*** to tighten the standards further in 2015, but then-Administrator Gina McCarthy -- now President and CEO of the Natural Resources Defense Council and BidenÃ•s pick to be domestic climate policy chief -- found 70 ppb adequate to protect public health with the Ã'adequate margin of safetyÃ" required by the air law. The 2015 NAAQS is still stricter than the 75ppb standard set in 2008 by the George W. Bush ***EPA***.

Ã'I agree with Gina McCarthy,Ã" said Wheeler, arguing that the scientific evidence is largely unchanged since the Obama EPAÃ•s review. Ã'Maintaining the standard is certainly not rolling it back."

Wheeler touted Ã'spectacularÃ" progress in improving air quality during the Trump administration, including a 4 percent reduction in ozone levels, as further justification for leaving the NAAQS in place.

He further noted that both ***EPA*** staff and a majority of the Clean Air Scientific Advisory Committee (CASAC),

which advises ***EPA*** on setting NAAQS, backed the decision to retain the Obama NAAQS.

Much of the criticism of the Trump administrationÃ•s decisions against changing the PM and ozone NAAQS focused on the Ã'streamlinedÃ" process ***EPA*** used, under a 2018 memo written by former Trump ***EPA*** Administrator Scott Pruitt. ***EPA*** combined previously separate steps in the review process, and declined to recruit a specialized subcommittee traditionally used by ***EPA*** in prior reviews to assist the seven-member chartered CASAC.

Also, the composition of CASAC has come under fire as inadequate to properly scrutinize ***EPA*** staffÃ•s work, or as biased against epidemiological evidence. The panel is led by Tony Cox, an industry consultant and skeptic of ***EPA*** staffÃ•s Ã'weight of evidenceÃ" approach to assessing air pollution risks.

The former process Ã'had gotten out of control,Ã" taking seven or eight years to complete, Wheeler said. He described the traditional approach involving a subcommittee as Ã'one of the biggest time factorsÃ" and a Ã'double layerÃ" of review not required by law that cost at least a year. Wheeler called the current CASAC Ã'very talented.Ã"

With respect to the streamlined process established by Pruitt, the administrator said, Ã'We have shown and proved that it is successful,Ã" and Ã'you can do a thorough review of the scienceÃ" in the five-year timeframe.

Ã"Corrupt and Inadequate ProcessÃ•

But John Bachmann, former associate director for science/policy and new programs at EPAÃ•s Office of Air Quality Planning and Standards, criticized the methodology underpinning WheelerÃ•s decision.

Ahead of WheelerÃ•s announcement, Bachmann issued a statement, saying, Ã'In developing the decision not to revise the ozone standard, ***EPA*** used the same corrupt and inadequate process for developing and reviewing science and policy issues as for the decision on particulate matter earlier this month. They did not include a panel of experts on health and environmental effects of ozone and limited external science review to [a] small group who were admittedly ill equipped to review all aspects of science and policy.Ã"

But on the press call, Wheeler fired back at Bachmann and said that critics of the streamlined review method Ã'actually helped create this process that . . . violated the lawÃ" by consistently taking much longer than five years. Ã'If anybody created this process, it was Mr Bachmann,Ã" who oversaw NAAQS reviews for years, Wheeler said. The only other NAAQS rule issued on time was the 1997 ozone NAAQS, set at 80 ppb, Wheeler said.

Any attempt by the Biden administration to lengthen the review process again and to undo the NAAQS reforms implemented by the Trump ***EPA*** Ã'would open up the agency to litigation,Ã" Wheeler said.

However, NAAQS decisions typically face litigation from environmentalists seeking tougher standards and often by industry groups trying to either weaken them or at least avoid the rules becoming increasingly stringent.

ALA in a Dec. 23 statement said, Ã'By finalizing this rule at levels the science says are not safe, ***EPA*** is yet again failing to prioritize the health of Americans, or the latest and best science.Ã" Further, Ã'We call on President-elect Joe Biden to put a high priority on significantly strengthening the National Ambient Air Quality Standards for both ozone pollution and particulate matter.Ã" ALA again seeks an ozone NAAQS Ã'no higher thanÃ" 60 ppb.

But the American Petroleum Institute (API), representing the oil sector, welcomed the final rule. Ã'API and groups across several industry sectors support EPAÃ•s decision to retain the national limits of 70 parts per billion (ppb),Ã" the group said. Ã'Under the existing standards, the regulated sectors have innovated and taken action, including the production of cleaner motor vehicle and power generation fuels to reduce emissions, while continuing to support the American economy.Ã" -- Stuart Parker (sparker@iwpnews.com)

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